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House of Representatives

The House was not in session today. Its next meeting will be held on Wednesday, September 3, 2003, at 2 p.m.

Senate

THURSDAY, JULY 31, 2003

(Legislative day of Monday, July 21, 2003)

UNANIMOUS CONSENT AGREEMENT—H.R. 6

Mr. FRIST. Mr. President, we have three short unanimous consent requests. Senator BAUCUS will be taking the floor shortly.

I ask unanimous consent that following Senator BAUCUS's statement and Senator DODD's statement on free trade, the Senate then proceed to the consideration of Calendar No. 85, H.R. 6, the House-passed Energy bill, provided that all after the enacting clause be stricken and the text of the Senate amendment to H.R. 4 from the 107th Congress as passed by the Senate be inserted in lieu thereof; the bill then be read a third time and the Senate proceed to a vote on passage of the bill with no intervening action or debate; further, that following that vote, the Senate insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees with the ratio of 7 to 6.

The PRESIDING OFFICER. Is there objection?

Ms. CANTWELL. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Reserving the right to object, I know the leadership on both sides of the aisle would like to proceed on last year's Senate Energy bill. This Senator believes we have just begun to have debate on two important issues that have emerged since that legislation was passed by this body.

The first issue is we now know for a fact, proven by the Federal Regulatory Commission, by the Department of Justice, and by Enron's own memos, that market manipulation has occurred. The 2002 Energy bill does not address that issue.

This body will need to come back and address that issue. I am happy to address it in another forum, but I am hearing a commitment from leadership on both sides that we will come back and address this issue.

The second issue: The Federal Regulatory Commission, since the passage of the 2002 act, issued a rule calling for the implementation of mandatory regional transmission organizations and standard market design. For my colleagues who do not understand what that means, it means a national grid where your region's cheap, affordable electricity at cost-based rates might be displaced by the highest bidder of an energy company that wants to sell its more expensive energy in your State.

The 2002 bill does not address that. We need to address the fact that we do not want FERC to proceed on an order mandating regional transmission organizations with standard market design. That is what some of my amendments dealt with; that is what some of the underlying bill dealt with. That is not in the 2002 version.

I will not object at this time based on agreement that I have heard from my leadership and the majority leadership that we will have an opportunity to address both of those issues in the future.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—H.R. 2739 AND H.R. 2738

Mr. FRIST. Mr. President, I ask unanimous consent that immediately following the vote on the passage of the Energy bill, all debate time be yielded back and the Senate proceed to a vote on passage of H.R. 2739, the Singapore bill, to be followed by a vote on passage of H.R. 2738, the Chile free-trade legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—S. 139

Mr. FRIST. Mr. President, I ask unanimous consent that at a time determined by the majority leader, following consultation with the Democratic leader, the Environment and Public Works Committee be discharged from consideration of S. 139, the Climate Stewardship Act of 2002, and the Senate then proceed to its consideration; that the measure be considered on the following limitations:

That there be a total of 6 hours of debate on the bill and substitute amendment, with the time equally divided and controlled between the proponents and opponents; that the only amendment in order be a McCain-Lieberman substitute amendment, as specified in the debate time limitation; that upon the use or yielding back of all time, the Senate proceed to a vote on adoption of the amendment; that upon disposition of the amendment, the bill, as amended, if amended, be read the third time,

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

and without further intervening action or debate the Senate proceed to vote on passage of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. A discussion of what we have just done will take place later in the evening. The unanimous consent request means that Senator BAUCUS and Senator DODD will have their statements followed by a series of stacked votes. We will have at least three rollcall stacked votes, and then we will have some judge votes; we will be in consultation as to how many judge votes there will be. The plans will be to have a series of at least three rollcall stacked votes tonight.

The PRESIDING OFFICER. The Senator from Montana.

CHILE AND SINGAPORE FREE-TRADE AGREEMENTS

Mr. BAUCUS. Mr. President, I appreciate the work of the majority and minority leaders in putting this agreement together tonight. It sounds as if we will be able to get home for recess.

I will say a few words about the Chile and Singapore free trade agreements.

Today the Senate begins its debate on implementing the United States-Singapore and United States-Chile Free Trade Agreements.

Bringing these bills to the floor this month has been a priority for me, as I know it has been for Senator GRASSLEY. Timely passage will allow these two important agreements to go into effect as planned on January 1, 2004. And passage will user in a new era of enhanced economic ties between the United States and two important trading partners.

These are the first bills to come before the Senate under the renewed fast-track procedures adopted last year in the Trade Act of 2002. So before I discuss the agreements and the implementing bills in detail, I want to talk about the events that have brought us here today.

One year ago, the Senate passed the Trade Act of 2002 by a vote of 64 to 34. Among other important provisions, the Trade Act gave the President fast-track trade negotiating authority for 3 years, renewable for 2 more. Fast-track—or trade promotion authority, TPA, as it is sometimes called—is a contract between Congress and the administration. It allows the President to negotiate trade agreements with foreign trading partners with a guarantee that Congress will consider the agreement as a single package. No amendments are allowed and a straight up-or-down vote is guaranteed by a date certain.

In return, the President must pursue a list of negotiating objectives set by Congress. And he must make Congress a full partner in the negotiations by consulting with Members as the talks proceed.

Last year, as Chairman of the Finance Committee, I worked hard to pass the Trade Act and renew the President's fast-track trade negotiating authority.

In many cases, fast-track is an absolute necessity for completing new trade agreements. Our trading partners simply will not put their best deals on the table if they know that Congress can come back and change the agreement later.

Getting those best offers on the table is critical. It means more jobs for American workers, a level playing field, more exports for our farmers, ranchers, and companies and more choices and lower costs for consumers.

That doesn't mean our trade agenda ground to a halt without fast-track. We passed the U.S.-Jordan FTA Implementation Act in 2001 without fast-track—and by an overwhelming margin. And the Clinton Administration began negotiating the Singapore and Chile FTAs without fast-track.

I believe, frankly, that we could pass the Singapore and Chile bills without fast-track as well. But having it certainly makes the process run smoothly.

That brings me to the two free trade agreements themselves.

I have long been a supporter of trade with Singapore and Chile. In 1999, I took a delegation of Montana business people to Chile to press the case directly. I have also visited Singapore with a Montana trade delegation.

Even before we passed the Trade Act last year, I introduced legislation to grant fast-track specifically for a Singapore or Chile free-trade agreement.

Negotiating these agreements took several years of work, under both the Clinton and Bush Administrations, many negotiating sessions, and hours of consultation with Congress.

I am glad that my work and that of so many others has paid off and brought these agreements before us today. Congratulations are due all around for a job well done.

These are the first agreements to be held to the new and progressive standards included in last year's Trade Act.

By and large, I think the two agreements stack up fairly well against the negotiating objectives set out by Congress. They set a new standard in many areas that is truly state-of-the-art.

I will touch on some of the highlights.

On agriculture, the Chile FTA provides for tariff-free, quota-free trade within 12 years, with more than 75 percent of U.S. farm products entering Chile tariff-free within 4 years. That's a major achievement. U.S. farmers will have access to Chile that is as good as or better than Chile gave to the European Union and Canada in existing trade agreements.

Significantly, Chile has committed to the United States to eliminate its so-called ''price bands'' on certain commodities. These price bands—or variable tariffs—are extremely harmful to our farmers. Chile agreed to eliminate them.

The main benefits to my state of Montana will be in improved market access for beef and wheat.

Senator GRASSLEY and I worked hard to ensure that Chile will grant reciprocal recognition of U.S. meat inspections. With this important development, Montana's world-class ranchers now have the access to Chile's growing market that they deserve.

The agreement will also eliminate the 10 percent tariff that puts American wheat growers at an artificial disadvantage when competing with Canadian growers for sales in Chile. Obviously, Canadians do not pay that. We Americans do, until this agreement is put into effect.

On Market access, these two agreements enshrine the principle that all tariffs must eventually go to zero. U.S. policy of entering comprehensive free trade agreements stands in sharp contrast to the practices of some of our trading partners, who negotiate agreements that exclude agriculture or other sensitive sectors.

The Singapore and Chile agreements send the right message on market access: countries that are not ready to put everything on the table are not ready to negotiate an agreement with the United States.

On services, both agreements offer expanded market access for U.S. services providers and strong transparency rules for service regulations that exceed Chile and Singapore's WTO commitments. The agreements break new ground by using a ''negative list,'' where all services are subject to the agreements' rules unless expressly excluded.

Particular achievements include enhanced access to the Singapore market for banking and other financial services, which is important because Singapore is a regional hub for southeast Asia.

Enhanced market access for services is critical, because the service sector now provides the majority of American jobs. So expanding services trade means more job opportunities.

The agreements include intellectual property rights obligations that exceed WTO levels. They set a high standard of protection for trademarks, copyrights, patents, and trade secrets that will support innovation and our country's creative industries, and they establish a tough enforcement regime for piracy and counterfeiting.

The agreements extend free trade principles to electronic commerce—making sure protectionism cannot take root in the new frontier of trade.

Unlike NAFTA, which dealt with labor and environment in side agreements, the Singapore and Chile agreements include core chapters dedicated to these important subjects. It is an improvement.

Both agreements incorporate the key Congressional objective that countries commit not to ''fail to effectively enforce'' their labor and environmental laws ''through a sustained or recurring

course of action or inaction, in a manner affecting trade.'' This commitment is enforceable through dispute settlement.

The agreements also foster cooperative projects to promote environmental protection and worker rights. For example, the United States will assist Chile in building capacity for wildlife protection and resource management and to improve public information about chemicals released by industrial facilities.

The agreements establish a secure and predictable legal framework that covers all forms of investment, and investor rights are backed up with dispute settlement procedures.

All core obligations of the agreements, including environmental and labor provisions, are subject to enforcement through dispute settlement. Panel proceedings must be open and transparent—that is totally new—including public hearings, public release of legal submissions, and the right of third parties to submit views.

For the first time in a U.S. free trade agreement, panels will be able to impose monetary penalties in the first instance. If those monetary penalties are not paid, trade sanctions will be available as a back up—even in environment and labor cases.

There are those who see this use of fines as a step back. In my view, it is something worth trying, to see how well it works.

The fine mechanism should allow for a greater focus on cooperative problem-solving in resolving disputes. If it doesn't trade sanctions are still available.

Only experience can tell us how well this system will work. Based on that experience, we can reconsider a fines-based system in future agreements if we need to.

Finally, a word about trade laws. Last year's Trade Act instructed the administration to ''avoid agreements that lessen the effectiveness'' of U.S. trade laws.

These agreements reflect that instruction. There are no provisions weakening our antidumping or countervailing duty laws.

As in NAFTA, the President may exclude Singapore from a global safeguard remedy in certain circumstances. This exception does not apply to Chile.

At the same time, both agreements strengthen the ability of American producers to obtain safeguard relief—if needed—by creating new bilateral safeguards, new textile and apparel safeguards, and a tariff snap-back safeguard for sensitive agricultural products from Chile.

Overall—these agreements cover a lot of ground, and they do it well.

Does that mean that we now have the perfect text for every future agreement? Of course not. There is always room for improvement in trade agreements.

There is no one-size-fits-all solution—whether you are talking about agriculture, intellectual property, environmental standards, or services.

That is why I feel strongly that every new free-trade agreement needs to be adapted to the particular circumstances of the partner country involved. Some of the approaches taken in the Singapore and Chile agreements—in environment, labor, and agriculture, for example—simply may not work for countries at different levels of development or with different political and social structure.

To some extent, these are issues for another day. But I raise them today as fair warning.

I think the consultation process worked well for the Singapore and Chile agreements, but we will need to do even better on the CAFTA, Australia, and other potentially controversial agreements. Otherwise, I believe both the ambitious negotiating schedules and the chances of Congressional approval for future agreements are at serious risk.

Now I want to turn to the implementing bills themselves.

These bills were prepared by the administration in consultation with Finance Committee members and staff. We have followed the sample cooperative drafting procedures that were used for the NAFTA, the Uruguay Round, and other trade agreements considered under fast-track.

I am satisfied with the results of this process.

The two bills before us today are very similar to each other and to the Implementation Acts for NAFTA and the U.S.-Jordan Agreement. They are narrowly tailored to include only what is necessary or appropriate to implement the agreements. Where there are differences between the two bills, they reflect different negotiated outcomes in the two agreements.

I have worked hard to make sure these draft bills meet two criteria. First, the bills must accurately reflect the agreements. Second, the bills must preserve the prerogatives of Congress over trade policy.

One of my main concerns in the Singapore bill has been implementation of the Integrated Sourcing Initiative, or ISI. I have worked to make sure the bill narrowly reflects the purpose of the ISI and does not provide unintended benefits to third countries.

The bill achieves that goal by assuring that Congress will have a vote before the list of ISI products can be expanded. I want to thank USTR and Chairman GRASSLEY for working with me to come up with language that does the job.

I also had some concerns about whether the ISI could create a loophole in our economic sanctions and global safeguard laws. I appreciate the Administration's willingness to think creatively and come up with language in the Statement of Administrative Action that will help avoid potential problems.

Another concern—in both bills—has been the role of Customs. A few months ago, Chairman GRASSLEY and I came to a temporary agreement with the Administration on how to divide authority over Customs between the Departments of Treasury and Homeland Security.

A process is in place to review the initial division of labor in the coming year. So it is critical that nothing in these bills changes the current division or supersedes the review process. Again—I appreciate the willingness of Chairman GRASSLEY and the Administration to work with me on this issue.

Mr. President, the Singapore and Chile free trade agreements are solid agreements that will create economic opportunities for Americans.

With the WTO talks in a stalemate and FTAA talks bogging down, we need to pursue bilateral and regional options to expand trade and grow our economy. These agreements help achieve that goal.

A strong vote in favor of these agreements will send all the right messages—to American workers, farmers and businesses and also to our trading partners—that the United States still stands for trade liberalization. That our trade agenda is on track. And that the right kind of agreements will receive broad Congressional support.

Mr. President 1 year ago this week, the Senate passed the Trade Act of 2002.

This was landmark legislation. It was hard fought—it took the better part of 18 months to write and pass. It was far-reaching—touching on many aspects of our trade agenda. And it had support across the political spectrum—especially in the Senate.

Among its many provisions, the Trade Act improved and expanded the Trade Adjustment Assistance program for farmers and ranchers; renewed the President's Fast-Track trade negotiating authority; and renewed and expanded the Andean Trade Preference Act.

On august 6, we reach the 1-year mark for all these changes. So now is a good time to take stock of what has been accomplished so far.

Have the provisions of the Trade Act been implemented in a timely fashion? Are they working as Congress intended? And what remains to be done?

In sum, what I am here to provide today is a report card on the first year of the Trade Act of 2002.

I am proud of all the work that went into the Trade Act. But the part I am most proud of is the historic improvement and expansion of Trade Adjustment Assistance.

We all know that expanding trade is good for the economy as a whole. It creates new export opportunities for farmers and businesses. It generates employment. It gives consumers more choices and saves them money.

But trade liberalization is not always good for individual workers. Inevitably, some will lose their jobs.

Trade adjustment assistance is the result of a promise first made to American workers by President Kennedy. He

promised workers that when our Government's trade policy results in the loss of jobs, we will help dislocated workers retrain, retool, and learn the new skills that they need to return to the workforce. That promise has been consistently renewed by Congress ever since.

Last year's Trade Adjustment Assistance Reform Act grew out of 40 years of experience with the TAA program. Many of the bill's key reforms were suggested in comprehensive studies of the program's strengths and weaknesses done by the GAO and the Trade Deficit Review Commission.

What those reports told us was that there were some ways to make TAA work better. That meant expanding eligibility to cover more workers affected by trade. It meant expanding benefits to assure a more useful retraining experience. and it also meant tightening up the rules in some places to make sure that the program is operating responsibly.

The improved TAA program went into effect last November.

Primary workers who lose their jobs due to import competition continue to be eligible for assistance. But the new, expanded eligibility rules also make assistance available to secondary workers whose companies lose business supplying inputs to primary firms; and workers who lose their jobs when their companies shift production overseas.

Secondary workers are only secondary in the minds of academics who made up the term. The fact is that they suffer the same job loss for the same reason as primary workers. They deserve the same chance to retrain. Now, that is what they get.

In another improvement, workers can now get training and income support for up to 2 years. this is a key change from the old program, where income support ran out before training benefits.

That led many workers to drop out of training before they were done. Dropping out of training defeats the whole purpose of TAA, so this was a critical fix.

Another key fix was the addition of a health care benefit. One of the things that has kept workers out of TAA retraining in the past was their inability to maintain affordable health insurance for their families. Now TAA enrollees are entitled to a 65 percent tax credit toward qualified health insurance expenses while in training.

Workers are also benefitting from a streamlined application process. The Trade Act combined the old TAA and NAFTA–TAA programs into one—so workers no longer have to apply twice under different rules.

Since last November, the Department of Labor has certified 1,242 TAA petitions, making 133,848 workers eligible to apply for TAA benefits.

That includes workers from Stimson Lumber in Libby, MT, and Trout Creek Lumber in Trout Creek, MT. Our lumber industry in Montana has been hard hit by unfairly subsidized Canadian lumber. I hope there will be a long-term solution to this intractable problem that will stop the job losses. I know that getting TAA assistance is not the first choice for any of these workers. But at least it is something—and something much more useful now than it was before.

Most of last year's reforms to TAA have been fully implemented and are working well. I want to thank Secretary Chao, Assistant Secretary DeRocco, and the team at the Education and Training Administration for making this priority. Thanks to their planning and hard work, the Department of Labor has done an exemplary job getting the improved program off the ground.

Still, the work of implementing TAA reform is not done. There are at least four areas where more work lies ahead.

First, the Trade Act required the Department of Labor to process petitions faster—in 40 days rather than 60. Slow petition approvals are a problem that has dogged the TAA program for years. Workers can't get program benefits until their petitions are approved.

I am glad to see that processing times are picking up. But they are not down to 40 days yet. I know the Labor Department appreciates the importance of speeding up processing time—and I certainly urge them to redouble their efforts in that regard.

Second, the Trade Act created a new Alternative TAA program—sometimes called ''wage insurance''—aimed at older workers. Instead of enrolling in traditional TAA, these workers can choose to take a lower-paying job and receive a wage supplement from the government for up to 2 years. The goal of Alternative TAA is to encourage on-the-job training—which is usually the best training—and get workers back in jobs faster by making up some of the temporary income loss they may suffer by changing careers.

Alternative TAA is scheduled to go into effect on August 6 of this year. I am increasingly concerned that this deadline will not be met. Labor Department officials have assured me that they fully intended to launch this program on time. I don't doubt their sincerity or resolve.

So far, however, no draft regulations or program details have been made available. That means the public has not been able to comment on how the program might work. Outreach to potential enrollees cannot begin. And time is growing awfully short to get the States involved, even though they are on the front lines in running this program.

Alternative TAA is one of the most important innovations in the Trade Act. If it works, it could provide a whole new model for assisting displaced workers in this country.

One year seems like plenty of time to get this program running. I certainly hope it will be up and running by the deadline set by Congress.

A third outstanding item is the health care tax credit. A refundable credit was available starting last December. Congress set this August as the deadline for making the credit advanceable. For most people, that is the key to affordability.

The tax credit has been off to a somewhat shaky start. That is understandable, given that we are trying something completely new here.

In order for the tax credit to work, each state has to provide at least one group coverage option for eligible workers who do not have COBRA coverage.

As of now, it appears that about 22 states will have their coverage options up and running by August. That means that in more than half the states, some qualified workers will not be able to use their tax credits to by health insurance—unless they have COBRA.

That's not something the Federal Government can ultimately control. It is up to the States to provide retraining workers with qualified options. But I certainly encourage Treasury, HHS, and DOL to redouble their outreach efforts to get the slower States to pick up the pace.

The Trade Act of 2002 for the first time created a TAA program especially for farmers and ranchers. Farmers and ranchers are affected by trade a little differently from manufacturing workers. They don't tend to lose their jobs and go on unemployment insurance. Instead, they can face sudden sharp falls in commodity prices due to trade. These price drops affect their income, but not necessarily their employment status.

TAA for farmers has been a long time in coming. After several failed attempts, history has shown that trying to shoe-horn farmers and ranchers into a TAA program designed for manufacturing workers doesn't work. So Congress created a TAA program that better fits their needs. The eligibility trigger is different—it is based on the effect of trade on commodity prices. But the purpose is the same—give farmers a chance to retool, retrain, and adapt to import competition.

I am very proud of this program. It has the potential to do some real good in Montana and other States where farmers work hard to make it in a global economy. And it can help bolster support for trade liberalization in the agricultural community.

USDA has done some solid thinking on how to put this program together. I commend them on their outreach to Congress and to the private sector during the planning stages.

But the effort got off to a very slow start. Even though things are back on track now, they are running way behind schedule. Congress set aside $90 million for this program in fiscal year 2003 and told USDA to get the program operational by March of this year. That didn't happen.

I know that USDA is close to finalizing the regulations so they can get

TAA for Farmers up and running. I urge Secretary Veneman to do everything in her power to make sure that the program gets started in time to use the funds that Congress intended for our farmers in this fiscal year.

What happens next?

The first step is getting all the changes to TAA up and running. I hope that we are in the home stretch on that.

Then we need to start tracking results. Seeing how well the new, improved program is working. To that end, Senator GRASSLEY and I have jointly asked the GAO to do an assessment of how well TAA has been working in the first year under the new law. We have to wait long enough for meaningful data to be collected. So that report is due out next summer, and I am looking forward to the results.

In the meantime, I will be keeping my eye on TAA. A few important issues to watch will be training funds: Was the increase in the Trade Act enough to meet increased enrollment?, and performance evaluation: Are DOL and the states cooperating to generate good data for tracking program participation and outcomes?

One last item for future action is TAA for Firms. This program, which operates out of the Department of Commerce, provides technical assistance to small and medium-sized companies that face layoffs due to import competition. The companies themselves chip in half the money to fund their adjustment plans. And they pay back the Federal share in tax revenues and foregone unemployment services when they succeed.

For many years, TAA for Firms has been chronically underfunded. A backlog of approved but unfunded adjustment proposals is building up in every State.

In order to begin reducing this backlog, in the Trade Act of 2002, Congress reauthorized TAA for Firms at an increased funding level of $16 million annually. The President's budget for fiscal year 2004, however, proposes funding at only $13 million.

This is not enough, and I view it as unacceptable backsliding by the administration. I encourage our appropriators to fund this program fully at the authorized level of $16 million.

Aside from funding, I think the biggest threat to the effective operation of the TAA for Firms program is a pending proposal to change its management structure. This program works well under a small centralized management in Washington, supplemented by the excellent work of 12 regional Trade Adjustment Assistance Centers.

The program is not broken and does not need to be fixed. That is why I oppose the department's plans to break the Washington office up into seven separate offices scattered around the country. It seems like an inefficient use of government resources that will only complicate oversight and jeopardize consistent decision-making. This is not a partisan issue—it's just good government.

That is why I have introduced S. 1120—a bill to move the FAA for Firms program to a different part of the Commerce Department, where it can continue to be centrally managed. The bill currently has 12 co-sponsors, and I urge my colleagues to support it.

In addition to TAA, there were, of course, several other very important provisions in the Trade Act of 2002. Most significantly—Trade Promotion Authority.

After a lapse of 8 years, we were able to renew the fast-track procedures that allow the President to submit trade agreements to Congress for an up-or-down vote with no amendments. It is these very procedures that bring us to the floor today to debate, and ultimately vote on, the Singapore and Chile FTAs.

Some people say our trade agenda was stalled—or even dead—before we passed TPA. I strongly disagree.

We completed China and Taiwan's WTO accessions. We passed AGOA, the Jordan FTA and the Vietnam trade agreement. We know from experience that good, strong trade bills with bipartisan support can pass the Congress even without fast-track.

But fast-track makes this more likely. And—particularly when we are negotiating complex agreements with large groups of countries in the WTO or FTAA—there is just no other way to get our trading partners to put their best deals on the table. They won't show their bottom line if they think Congress can come back and renegotiate the deal.

So getting fast-track renewed is an important accomplishment. It lasts for 3 years—extendable to 5. I hope we use it well.

I want to see us use fast track to negotiate trade agreements that serve the commercial objectives of our farmers and businesses. Agreements that will create jobs for our workers and real value for consumers.

These are the kinds of agreements that will build domestic support for our trade agenda. With that support, our progress on trade will become self-reinforcing—and we will not need to worry about another lengthy lapse in fast-track.

For the last few months I have been working—together with Congressman DOOLEY and others—to reach out to business and agriculture groups and others interested in trade to hear their priorities for commercially meaningful trade agreements. I plan to continue this process and to consult closely with the administration on what I learn.

That leads me to just a few comments on consultation. The bills before us today are the first to be considered under the fast-track procedures approved last year. And one of the key refinements in the bill was to beef up the consultation process between the administration and Congress.

I want to thank Ambassador Zoellick and his staff for the efforts they have put into these consultations. Given the nature and pace of negotiations, there is always a balance to be struck between timely and meaningful consultation with Congress and quick turnaround by our negotiators. I hope they will continue their efforts to improve Congressional access to draft negotiating documents and keep the lines of communication open even when the pace of negotiations gets frantic.

I also want to commend both USTR and Senator GRASSLEY and his staff for the drafting process for the Singapore and Chile bills. It was very cooperative. This is the way the informal drafting process is supposed to work under fast-track. I think it sets a good precedent as new agreements come down the road.

Finally, I want to turn to another part of the Trade Act—the renewal and expansion of the Andean Trade Preferences Act.

Early reports slow rising exports from ATPA countries to the U.S. in some of the new categories to receive benefits. Reports from USTR and the ITC indicate that ATPA continues to play a critical role in economic diversification and drug eradication efforts in the Andean region.

As always, that doesn't mean our trade relationship with the region is trouble-free. For one thing, U.S. companies have a number of unresolved investment disputes with Andean countries. Even with the pressure USTR could bring to bear prior to ATPA renewal, we were not able to resolve them all. For example, Ecuador continues to deny VAT payment credits that it owes to American companies—despite continued promises at the highest levels of government.

Advancing the trade agenda through new agreements is important—but so is making sure that our trading partners are living up to the commitments they have already made. Congress will be looking at ATPA again in a few years, and we need to keep our eyes on the region.

The Trade Act of 2002 was the most significant and far-reaching piece of trade legislation to come through the Congress in 14 years. I am proud to have played a central role in shaping it. Overall, my report card on implementation is pretty positive.

As implementation on TAA moves forward, I intend to continue monitoring the administration's efforts and the impact that the program has on eligible workers. I also plan to continue working on trade legislation that advances our agenda of job creation and economic growth. There will be plenty of opportunities ahead.

ENERGY TAX INCENTIVES—S. 14

Mr. BAUCUS. Mr. President, we are about to vote on the comprehensive Energy legislation. While the Senate has debated numerous aspects of this legislation, there has been a little discussion—not very much, I might add—

of the tax provisions in this bill. Yesterday, Senator GRASSLEY, Senator BINGAMAN, Senator DOMENICI and I filed the Energy Tax Incentives Act of 2003 as an amendment to S. 14.

I ask unanimous consent to have printed in the RECORD a revenue table and the committee report at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BAUCUS. Mr. President, this amendment reflects the energy tax incentives reported out by the Finance Committee in April. The incentives in this amendment enjoy broad support, across the political spectrum.

These tax incentives are also very similar to those in last year's energy tax bill. In April of last year, they won overwhelming support on the Senate floor.

I was disappointed that the conferees did not reach an agreement on the larger energy package last year. I am hopeful that this year, we will see these provisions signed into law.

Before explaining the specific incentives proposed in this amendment, let me first take a few moments to address the nature of the energy challenge facing the nation.

The last few years have seen energy crises, characterized by energy supply shortages and price spikes. We saw rolling blackouts in the State of California. Energy price jolts affected nearly all Americans. Energy-related disruptions were widespread and severe.

Folks back in my home state of Montana have been particularly hard hit. Many people in Montana have to drive great distances just to get to work. And high gas and energy prices raise the costs of doing business for small businesses, farmers, and ranchers, alike.

Today, we face continued uncertainty in world energy markets. Earlier this year, energy prices soared to record levels. This was due, in part, to uncertainty over the war in Iraq. And it was also due, in part, to the colder-than-average winter.

Natural gas markets raise growing concerns. This May, Federal Reserve Chairman Alan Greenspan predicted that growing demand for natural gas and limited supplies would continue to raise natural gas prices. Chairman Greenspan warned that this situation could put American companies at a disadvantage relative to their overseas competitors.

Since then, natural gas prices have continued to climb. Today, natural gas prices are nearly double last year's levels. A year ago, natural gas prices across the nation averaged about $3 per thousand cubic feet. This year, during the last three days of June, trading on the New York Mercantile Exchange pushed prices up to an average of $5.98 per thousand cubic feet.

Natural gas is a key input and cost of doing business in the manufacturing sector. Manufacturing is very energy-intensive. Manufacturers use energy to heat factories, to heat boilers to make steam and produce electricity to run machines. Manufacturing accounts for nearly one-half of the nation's natural gas use.

Higher gas prices place additional competitive pressures on these businesses. The National Association of Manufacturers reports that rising energy costs are causing many companies to close their operations.

Slowing in the manufacturing sector accounts for much of the current weakening in our economy. And this means that hard-working Americans are losing jobs—high-paying jobs—jobs that often move overseas.

Rising natural gas prices also affect American consumers. The Department of Energy predicts that household bills will be about 20 percent higher this winter than last year.

Gasoline prices have also raised concerns. Last year at this time, the national average retail price for regular gasoline was about $1.40 per gallon. Earlier this year, prices peaked at almost $1.70 per gallon. Last week's average price was $1.52 per gallon. The Department of Energy expects prices to remain at this higher level throughout the year. This volatility in U.S. gas prices has a sharp economic effect, disrupting businesses and lives.

The average U.S. household uses about 1,100 gallons of gasoline a year in their cars. Thus the increase in gas prices over last year means that an average household is paying $132 more a year just for their car's gasoline. And because gas prices peaked at almost $1.70 per gallon earlier this year, the actual increase in household spending on gasoline was much greater.

Such a cost difference can have severe effects on businesses. Consider a business that relies primarily on trucking services for shipping its products. For these companies, even modest price volatility can break the business.

The outlook for both the gasoline and natural gas markets is not promising. The Department of Energy projects that during the next 20 years, world oil demand will increase by more than 50 percent, from 76 million barrels per day in 2000 to nearly 120 million barrels per day in 2020.

The more reliant we are on petroleum products, the more that oil price fluctuations will affect us. And continued political uncertainly and the treat of terrorism will worsen this vulnerability.

To address these energy challenges, the Energy Committee has designed the underlying bill. And to contribute to these efforts, earlier this year, the Finance Committee marked up a bill providing tax incentives to support these broader energy policy objectives. Those incentives are reflected in the pending amendment.

The Finance Committee amendment consists of a balanced package of targeted incentives directed to alternative energy, traditional energy production, and energy efficiency.

The amendment would accomplish its goals in three main ways:

First, it would encourage new energy production, especially production from renewable sources.

Second, it would encourage the development of new technology.

And third, it would encourage energy conservation.

Production, technology, and conservation. Let me explain each in turn.

First, new production is critical. The level of U.S. energy production directly affects our dependence on foreign sources of energy. If we can increase U.S. energy production faster than demand, we can become less reliant on foreign energy. The opposite, however, is taking place.

As this chart shows, through 2020, America's energy use is increasing more rapidly than domestic energy production. As a result, our reliance on foreign sources of energy is increasing.

Here is how we address the problem: Through targeted incentives, this amendment would encourage the development of both traditional and alternative sources of production, thereby boosting our overall energy resources. This will help promote American energy independence, which will contribute to both greater economic growth and national security.

The use of tax incentives to promote energy development stretches back to the enactment of the income tax in 1916, with tax incentives for the production of oil and gas. And in 1978, we created tax incentives for renewable fuels and for conservation.

This amendment would provide tax incentives for the development of renewable resources and alternative fuels. Renewables provide cleaner, safer alternatives to more drilling and more nuclear facilities.

This amendment would extend the wind and biomass credit for an additional 5 years. And the amendment would qualify many more sources—geothermal, solar, plant life, and others—as renewable fuel sources.

At the same time, we recognize that the U.S. will continue to rely on oil, gas, and coal production. To further boost production, the amendment would create a new credit for oil and gas production from marginal wells. And the amendment would simplify cost recovery of geological and geophysical expenditures. The amendment would also include several tax incentives to help the oil and gas industry to bring supply to market.

While this amendment would thus support exploration and production of more traditional resources, it would also encourage cleaner use of these fuels.

For example, the amendment includes several incentives to encourage electric utilities to invest in technologies that will make their coal-fired power plants cleaner-burning and more efficient. This will help make coal a more environmentally-friendly energy source into the future, even as we look for alternatives.

Energy sector activities are often front and center in environmental debates. Congress needs to consider environmental concerns when crafting its energy legislation. By carefully targeting our tax incentives, we can encourage more environmentally-friendly activities, such as the use of renewable resources and the transition towards cleaner, more-efficient technologies.

Let me turn to the second key element of the amendment: new technology.

New technology can be the cornerstone of energy independence and cleaner energy. In the future, electricity, new and alternative fuels, and fuel cells will power our cars.

But to get there, we will need substantial investments to create the building blocks for future technologies. Why? Because today's transportation sector is 97 percent reliant on petroleum based fuel. That's right. 97 percent.

We need a lot of change to make the transportation sector cleaner and more fuel-efficient. We need to make significant investments to bring about this change.

In addition, we need to promote the use of cleaner, more-efficient technologies throughout the energy sector. Such state-of-the-art technologies are often more expensive than more-traditional technologies. Tax incentives help to bridge the gap in cost between these cleaner technologies and traditional technologies.

Here is what we do.

We create tax credits for the purchase of new technology vehicles. These vehicles of the future will be powered by alternative fuels, fuel cells, and by electric batteries.

We also provide tax credits for the purchase of hybrid vehicles, which run partly on electricity and partly on gasoline.

What is so great about these vehicles? Well for starters, fuel cell and electric vehicles are zero-emissions vehicles. And hybrid and alternative fuel vehicles can speed us toward the development of these zero-emissions vehicles.

And each of these vehicle types can significantly improve fuel economy and energy independence. To make sure, we provide certain tax credits only if the vehicle achieves large improvements in fuel economy.

Many new vehicle technologies require new fuels and infrastructure to deliver those fuels. Therefore, the amendment provides tax incentives for the installation of new-technology refueling stations and for the purchase of alternative fuels.

We also have developed a number of incentives to promote the use of cleaner-burning, state-of-the-art technologies throughout the energy sector.

We create incentives for clean coal. Under the amendment, if you retrofit to use currently available clean coal technology, you are eligible for a production tax credit. If you use advanced technology, you are eligible for both an investment credit and a production credit.

Investing in these cleaner-burning technologies in the coal and transportation sectors will have positive long-term environmental effects, particularly for air quality.

Other incentives will promote the development of renewable energy technology. These and other tax incentives will help advance further technological development. This will have a long-term stimulative effect on America's economy.

The third key element of the amendment is conservation. Just as much as new production, conservation promotes energy independence. It also helps reduce pollution and thereby improve our health and the environment in the longer term.

In crafting these incentives, we have struck a balance between production and conservation. Increasing conservation—reducing energy consumption—will help reduce our reliance on foreign sources of energy.

And tax incentives can be effective means of encouraging conservation. A couple of years back, Economist Kevin Hassett told the Committee that ''a 10 percentage point credit would likely increase the probability of investing—in conservation—by about 24 percent.''

The amendment includes several incentives to encourage businesses and homeowners to use energy-efficient equipment, building materials, and appliances. These tax incentives can make the difference, as such products tend to be more expensive than more-traditional products and materials.

As Energy Secretary Abraham said during a tour of the National Renewable Energy Laboratory in Golden, Colorado, earlier this month: Americans can help mitigate an expected natural-gas shortage during the coming year by reducing energy use and adopting efficiency measures for heating and cooling homes and offices.

The amendment would give a tax credit to reduce the cost of the energy-efficient technology, enabling individuals to purchase energy-efficient refrigerators and other appliances.

The amendment would also empower individuals with more complete energy consumption information by encouraging metering devices. These types of metering devices allow people to make more-informed decisions about the use of energy and thereby save energy in their homes.

Over time, the benefits of tax investments in energy conservation will reduce monthly energy bills. These cost savings can have the same economic effect as a tax cut—more dollars in the hands of American families.

Those are the three key elements of the amendment. New production, new technology, and conservation.

The amendment includes other important provisions. One in particular is electric utility restructuring. This is important for investor-owned utilities, municipal utilities, and cooperatives, like those back in Montana.

Other provisions address nuclear decommissioning funds and the treatment of cooperatives.

Finally, these tax provisions address market inefficiencies by providing a real economic benefit for engaging in more environmentally-sensitive activities. In short, this amendment is good environmental policy and good energy policy.

This is a good amendment. It is a package of tax incentives that are important in their own right and that will complement the broader energy bill. It will provide a key component of our emerging environmental and energy policies.

I support Chairman GRASSLEY's position that this amendment generally should represent the position of the Finance Committee and the Senate during conference negotiations of the Energy Bill.

ESTIMATED REVENUE EFFECTS OF MODIFICATIONS TO S. 1149, THE ''ENERGY TAX INCENTIVES ACT OF 2003,'' FOR CONSIDERATION ON THE SENATE FLOOR

[Fiscal years 2004–2013, in millions of dollars]

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004–08	2004–13
Extension and Modification of Renewable Electricity Production Tax Credit—Extend (property placed in service before 1/1/07 (1/1/05 in the case of open-loop)) and modify the section 45 credit for producing electricity from certain sources (credit is equal to 1.8 cents per kilowatt hour for production from post-enactment facilities after 12/31/03).	esfqfa DOE	−111	−205	−298	−387	−384	−354	−326	−303	−287	−277	−1,381	−2,928

ESTIMATED REVENUE EFFECTS OF MODIFICATIONS TO S. 1149, THE "ENERGY TAX INCENTIVES ACT OF 2003," FOR CONSIDERATION ON THE SENATE FLOOR—Continued

[Fiscal years 2004–2013, in millions of dollars]

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004–08	2004–13
Alternative Motor Vehicles and Fuel Incentives:													
1. Credits for purchase of alternative motor vehicles, modifications to credit for electric vehicles, and extension of deduction for qualified clean fuel vehicles and property (deduction for property placed in service before 1/1/08 (1/1/12 in the case of hydrogen fuel); credit for alternative and electric vehicles purchased before 1/1/07 (1/1/12 in the case of hydrogen).	ppisa DOE	−151	−428	−649	−550	−17	38	−19	−2	−11	−19	−1,795	−1,767
2. Credit for installation of alternative fueling stations credit for property placed in service before 1/1/08 (1/1/12 in the case of hydrogen).	ppisa DOE	−2	−3	−3	−3	−1	(1)	(1)	(1)	(1)	(1)	−11	−10
3. Credit for retail sale of alternative fuels (30 cents/gallon in 2003, 40 cents in 2004, 50 cents in 2005 and 2006).	DOE	−83	−169	−215	−90	−1	−1	−1	−1	.....	.....	−558	−563
4. Modifications to small ethanol producer credit and extension of section 40 credit (through 12/31/10).	tyba DOE	−16	−34	−34	−34	−41	−49	−50	−29	−3	.....	−159	−290
5. Tax incentives for biodiesel (sunset 12/31/05 [3][4].	fsa DOE	−20	−29	−8	.....	.....	.....	.....	.....	.....	.....	−57	−57
6. Alcohol fuel and biodiesel mixtures excise tax credit [4].	fsa 9/30/03	31	46	49	48	45	43	40	36	33	30	221	402
7. Sale of gasoline and diesel fuel at duty-free sales enterprises.	DOE	*No Revenue Effect*											
Total of Alternative Motor Vehicles and Fuel Incentives.	.....	−241	−617	−860	−629	−15	29	8	8	19	11	−2,359	−2,285
Conservation and Energy Efficiency Provisions:													
1. Business credit for construction of new energy efficient homes.	ppb DOE & 12/31/07	−63	−102	−98	−108	−68	−21	−4	.....	.....	.....	−440	−465
2. Credit for energy efficient appliances	apb DOE & 12/31/07	−58	−82	−68	−46	−23	−8	−2	(2)	.....	.....	−277	−288
3. Credit for residential fuel cell, solar, and other energy efficient property.	ppb 1/1/04 & 12/31/07	−30	−54	−61	−71	−62	.....	.....	.....	.....	.....	−278	−278
4. Business tax incentives for qualifying fuel cells and microturbines (sunset 12/31/06).	ppisb DOE & 12/31/07	−5	−9	−14	−9	−4	−3	−1	(5)	(5)	(5)	−43	−46
5. Allowance of deduction for certain energy efficient commercial building property.	tyba DOE & ccb 1/1/10	−28	−51	−74	−101	−130	−139	−41	10	9	8	−385	−537
6. Three-year applicable recovery period for qualified energy management devices (excluding ancillary equipment):													
a. Electric devices (sunset for property placed in service after 12/31/07).	ppsia DOE	−9	−20	−42	−70	−61	−13	16	26	22	14	−202	−137
b. Water submetering devices (sunset for property placed in service after 12/31/07).	ppisa DOE	−4	−11	−21	−31	−24	−1	12	15	11	5	−91	−49
7. Energy credit for combined heat and power system property.	ppisa DOE & ppisb 1/1/07	−68	−79	−78	−51	−24	−11	−1	4	6	6	−300	−296
8. Credit for energy efficiency improvements to existing homes.	tyba DOE & tybb 1/1/07	−55	−78	−78	−63	−62	.....	.....	.....	.....	.....	−274	−274
Total of Conservation and Energy Efficiency Provisions.	.....	−320	−486	−534	−550	−396	−196	−21	55	48	33	−2,290	−2,370
Clean Coal Incentives—Investment and Production Credits for Clean Coal Technology:													
1. Credit for production from qualifying clean coal technology units.	pa DOE	−31	−58	−70	−80	−87	−90	−92	−94	−97	−97	−326	−797
2. Credit for investment in qualifying advanced clean coal technology (for property placed in service after the date of enactment and before 1/1/17 (1/1/13 in the case of advanced pulverized coal or atmospheric fluidized bed)).	ppsia DOE	−20	−47	−49	−41	−27	−111	−94	−39	−28	−18	−184	−475
3. Credit for production of electricity from qualifying advanced clean coal technology units.	pa DOE	−4	−17	−36	−55	−70	−96	−132	−153	−162	−168	−183	−895
Total of Clean Coal Incentives—Investment and Production Credit for Clean Coal Technology.	.....	−55	−122	−155	−176	−184	−297	−318	−286	−287	−283	−693	−2,167
Oil and Gas Provisions:													
1. Credit for marginal domestic oil and natural gas well production.	DOE	*No Revenue Effect*											
2. Natural gas gathering pipelines treated as 7-year property.	ppsia DOE	−3	−5	−8	−12	−41	−49	−58	−66	−77	−88	−69	−407
3. Expensing of capital costs incurred and credit for production in complying with Environmental Protection Agency sulfur regulations for small refiners.	epoia 1/1/03	−9	−7	−8	−12	−27	−52	−21	3	4	5	−63	−125
4. Determination of small refiner exception to oil depletion deduction—modify definition of independent refiner from daily maximum run less than 50,000 barrels to average daily run less than 60,000 barrels.	tyea DOE	−6	−7	−8	−8	−8	−8	−8	−8	−9	−9	−37	−81
5. Extension of suspension of 100% of taxable income limit with respect to marginal production (through 12/31/06).	DOE	−22	−35	−36	−13	.....	.....	.....	.....	.....	.....	−106	−106
6. Amortize all geological and geophysical ("G&G") expenditures over 2 years.	cpoii tyba DOE	234	−212	−449	−428	−320	−261	−226	−194	−188	−194	−1,175	−2,238
7. Amortize all delay rental payments over 2 years.	apoii tyba DOE	85	11	−64	−62	−35	−9	−1	−1	−1	−1	−65	−77

ESTIMATED REVENUE EFFECTS OF MODIFICATIONS TO S. 1149, THE ''ENERGY TAX INCENTIVES ACT OF 2003,'' FOR CONSIDERATION ON THE SENATE FLOOR—Continued

[Fiscal years 2004–2013, in millions of dollars]

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004–08	2004–13
8. Extension and modification of section 27 credit for facilities placed in service after the date of enactment and before 1/1//07, including viscous oil, coalmine gas, agricultural and animal waste, and refined coal; extension and modification of section 29 credit certain coal gasification and coke production from 1/1/02 through 12/31/05; clarification of definition of landfill gas facility; study of coal bed methane; for new facilities described in section 29 (c)(1)(A) & (B), credit rate is equal to $3.00 Barrel of Oil Equivalent; and 200,000 cubic feet per day limit[6].	DOE	−189	−134	−509	−601	−469	−230	−50	−(2)	.....	.....	−2,083	−2,363
9. Natural gas distribution lines treated as 15-year property.	ppisa DOE	−16	−38	−60	−90	−119	−145	−171	−200	−228	−242	−323	−1,309
10. Provisions Relating to Alaska Natural Gas:													
a. Credit for Alaska Natural Gas:	(7)	*No Revenue Effect*											
b. Treat certain Alaska pipeline property as 7-year property.	generally ppisa 12/31/12	.....	.....	.....	.....	.....	.....	.....	.....	.....	−150	.....	−150
11. Exempt certain prepayments for natural gas from tax-exempt arbitrage rules.	oia DOE	(2)	−1	−1	−2	−3	−3	−4	−5	−5	−6	−7	−31
Total of Oil and Gas Provisions	.....	74	−608	−1,143	−1,228	−1,022	−757	−539	−472	−504	−685	−3,928	−6,887
Electric Utility Restructuring Provisions:													
1. Modification to special rules for nuclear decommissioning costs—transfer of non-qualified funds (buyer gets deduction over live of plant); eliminate cost of service requirement; and clarify treatment of fund transfers.	tyba DOE	−47	−69	−76	−85	−94	−103	−113	−125	−137	−151	−371	−1,000
2. Treatment of certain income of electric cooperatives.	tyba DOE	−8	−18	−21	−23	−25	−27	−30	−33	−35	−38	−95	−258
3. Sales or dispositions to Implement Federal Energy Regulatory Commission or State electric restructuring policy prior to 1/1/08.	ta DOE	−1,321	−1,183	−1,273	−817	476	1,013	1,033	1,012	818	580	−4,118	338
Total of Electric Utility Restructuring Provisions.	.....	−1,376	−1,270	−1,370	−925	357	883	890	854	646	391	−4,584	−920
Additional Provisions:													
1. Extension of accelerated depreciation and wage credit benefits for businesses on Indian reservations (through 12/31/05).	DOE	2	−172	−290	−104	21	72	113	92	50	6	−543	−210
2. Study of effectiveness of certain provisions by GAO.	DOE	*No Revenue Effect*											
3. Repeal of the 4.3 cent tax on rail and barge diesel[8].	1/1/04	−107	−156	−161	−166	−171	−176	−182	−187	−192	−197	−761	−1,695
4. Modify research credit with respect to energy research.	ea DOE	−3	−7	−4	−2	−1	−1	(2)	.....	.....	.....	−18	−18
Total of Additional Provisions	.....	−108	−335	−455	−272	−151	−105	−69	−95	−142	−191	−1,322	−1,932
Revenue Provisions:													
1. Provisions relating to reportable transactions and tax shelters.	various dates after DOE[9]	92	115	119	120	124	131	139	150	164	179	570	1,333
2. Provisions to Discourage Corporate Expatriation:													
a. Tax treatment of inversion transactions.	([10])	193	117	140	168	202	242	290	348	418	493	820	2,611
b. Excise tax on stock compensation of insiders in inverted corporations.	generally 7/11/02	35	10	10	10	10	10	10	10	10	10	75	125
c. Reinsurance agreements	rra 4/11/02	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	2	5
3. Extend IRS User Fee (through 9/30/13)[11].	DOE	33	34	35	36	38	39	41	42	44	45	176	386
4. Add Hepatitis A to the list of taxable vaccines (including outlay effects).	([12])	8	9	9	9	9	9	9	9	9	9	44	89
5. Modification of the tax treatment of individual expatriation and residency termination.	([13])	19	18	21	24	28	32	37	43	49	56	100	328
Total of Revenue Provisions	.....	380	303	334	367	411	463	526	602	694	792	1,797	4,877
Net total	.....	−1,757	−3,340	−4,481	−3,800	−1,384	−334	151	363	187	−209	−14,760	−14,603

[1] Gain of less than $1 million.
[2] Loss of less than $500,000.
[3] This provision may also have indirect effects on Federal outlays for certain farm programs. Outlay effects will be estimated by the Congressional Budget Office.
[4] This is a preliminary estimate of the revenue effects of this provision. This preliminary estimate assumes that all of the ethanol and biodiesel subsidies would be provided through excise tax credits and refunds and income tax credits. If a portion of the subsidies is obtained in the form of outlay payments, the overall budget effect could be significantly greater than this preliminary estimate of revenue effects. The outlay effects of this provision will be estimated by the Congressional Budget Office.
[5] Gain of less than $500,000.
[6] Qualified facilities would be given credit for three years of production (five years in the case of refined coal).
[7] Effective the later of January 1, 2010, or initial date of interstate transportation of qualifying gas.
[8] Estimate assumes that the rail diesel LUST tax of 0.1 cents per gallon would be retained.
[9] Effective dates for provisions relating to reportable transactions and tax shelters: the penalty for failure to disclose reportable transactions is effective for returns and statements the due date of which is after the date of enactment; the modification to the accuracy-related penalty for listed or reportable transactions is effective for taxable years ending after the date of enactment; the tax shelter exception to confidentiality privileges is effective for communications made on or after the date of enactment; the material advisor disclosure provision applies to transactions with respect to which material aid, assistance or advice is provided after the date of enactment; the investor list provision applies to transactions with respect to which material aid, assistance or advice is provided after the date of enactment, and the penalty on promoters of tax shelters is effective for activities after the date of enactment.
[10] Effective for certain transactions completed after March h20, 2002, and would also affect certain taxpayers who completed transactions before March 21, 2002.
[11] Estimate provided by the Congressional Budget Office.
[12] Effective for vaccines sold beginning on the first day of the first month beginning more than four weeks after the date of enactment.
[13] Effective for individuals who expatriate or terminate long-term residency after February 27, 2003.

Legend for ''Effective'' column: apoii=amounts paid or incurred in; apb=appliances produced between; ccb=construction completed by; cpoii=costs paid or incurred in; DOE=date of enactment; ea=expenditure after; epoia=expenses paid or incurred after; esfqfa=electricity sold from qualifying facilities after; fsa=fuel sold after; oia=obligation issued after; pa=production after; ppb=property purchased between; ppisa=property placed in service after; ppisb=property placed in service between; rra=risk reinsured after; ta=transactions after; tyba=taxable years beginning after; tybb=taxable years beginning before.

Note.—Details may not add to totals due to rounding. Date of enactment is assumed to be November 1, 2003.

EXHIBIT 2

[COMMITTEE PRINT]

TECHNICAL EXPLANATION OF THE ENERGY TAX INCENTIVES ACT OF 2003

I. LEGISLATIVE BACKGROUND

The Senate Committee on Finance Marked up an original bill, S. ____(the ''Energy Tax Incentives Act of 2003''), on April 2, 2003, and, with a quorum present, ordered the bill favorably reported by a voice vote on that date.

NOTE: This bill was converted into Senate Amendment 1424.

TITLE I—RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT

A. EXTENSION AND MODIFICATION OF THE SECTION 45 ELECTRICITY PRODUCTION CREDIT

(Sec. 101 of the bill and sec. 45 of the Code)

PRESENT LAW

An income tax credit is allowed for the production of electricity from either qualified wind energy, qualified ''closed-loop'' biomass, or qualified poultry waste facilities (sec. 45). The amount of the credit is 1.5 cents per kilowatt hour (indexed for inflation) of electricity produced. The amount of the credit was 1.8 cents per kilowatt hour for 2002. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

The credit applies to electricity produced by a wind energy facility placed in service after December 31, 1993, and before January 1, 2004, to electricity produced by a closed-loop biomass facility placed in service after December 31, 1992, and before January 1, 2004, and to a poultry waste facility placed in service after December 31, 1999, and before January 1, 2004. The credit is allowable for production during the 10-year period after a facility is originally placed in service. In order to claim the credit, a taxpayer must own the facility and sell the electricity produced by the facility to an unrelated party. In the case of a poultry waste facility, the taxpayer may claim the credit as a lessee/operator of a facility owned by a governmental unit.

Closed-loop biomass is plant matter, where the plants are grown for the sole purpose of being used to generate electricity. It does not include waste materials (including, but not limited to, scrap wood, manure, and municipal or agricultural waste). The credit also is not available to taxpayers who use standing timber to produce electricity. Poultry waste means poultry manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

The credit for electricity produced from wind, closed-loop biomass, or poultry waste is a component of the general business credit (sec. 38(b)(8)). The credit, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000, or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39). To coordinate the carryback with the period of application for this credit, the credit for electricity produced from closed-loop biomass facilities may not be carried back to a tax year ending before 1993 and the credit for electricity produced from wind energy may not be carried back to a tax year ending before 1994 (sec. 39).

REASONS FOR CHANGE

The Committee recognizes that the section 45 production credit has fostered additional electricity generation capacity in the form of non-polluting wind power. The Committee believes it is important to continue this tax credit by extending the placed in service date for such facilities to bring more wind energy to the United States electric grid. The Committee also believes it is important to extend the placed in service date for closed-loop biomass facilities to give those potential fuel sources an opportunity in the market place. The Committee also believes it is appropriate to include in qualifying facilities those facilities that co-fire closed-loop biomass fuels with coal, with other biomass, or with coal and other biomass.

Based on the success of the section 45 credit in the development of wind power as an alternative source of electricity generation, the committee further believes the country will benefit from the expansion of the production credit to certain other ''environmentally friendly'' sources of electricity generation such as open loop biomass and agricultural waste nutrients, geothermal power, solar power, biosolids and sludge, small irrigation systems, and trash combustion. While not all of these additional facilities are pollution free, they do address environmental concerns related to waste disposal. In addition, these potential power sources further diversify the nation's energy supply.

In the current electricity market, the Committee believes that a subsidy via a tax credit of 1.8 cents per kilowatt-hour should provide sufficient incentive to investors to enter the market with alternative sources of electricity. Therefore the Committee believes indexing of the credit amounts for years after 2003 is unwarranted.

Because tax-exempt persons such as public power systems and cooperatives provide a significant percentage of electricity in the United States, the Committee believes it is important to provide the incentive for production from renewable resources to these persons in addition to taxable persons.

Lastly, the Committee believes that certain pre-existing facilities should qualify for the section 45 production credit, albeit at a reduced rate. These facilities previously received explicit subsidies, or implicit subsidies provided through rate regulation. In a deregulated electricity market, these facilities, and the environmental benefits they yield, may be uneconomic without additional economic incentive. The Committee believes the benefits provided by such existing facilities warrant their inclusion in the section 45 production credit.

EXPLANATION OF PROVISION

The provision extends the placed in service date for wind facilities, and closed loop biomass facilities to facilities placed in service after December 31, 1993 (December 31, 1992 in the case of closed-loop biomass) and before January 1, 2007.

The provision provides that, for facilities placed in service after the date of enactment, the amount of the credit will be 1.8 cents per kilowatt hour with no adjustment for inflation for production in years after 2003.

The provision also defines six new qualifying energy resources: biomass (including agricultural livestock waste nutrients), geothermal energy, solar energy, small irrigation power, biosolids and sludge, and municipal solid waste.

Qualifying biomass facilities are facilities using biomass to produce electricity that are placed in service prior to January 1, 2005. Qualifying agricultural livestock waste nutrient facilities are facilities using agricultural livestock waste nutrients to produce electricity that are placed in service after the date of enactment and before January 1, 2007.

For a facility placed in service after the date of enactment, the ten-year credit period commences when the facility is placed in service. In the case of a biomass facility originally placed in service before the date of enactment, the ten-year credit period is reduced to a five-year period and commences after December 31, 2003 and the otherwise allowable 1.8 cent-per-kilowatt-hour credit is reduced to a 1.2 cent-per-kilowatt-hour credit.

The provision modifies present law to provide that qualifying closed-loop biomass facilities include any facility originally placed in service before December 31, 1992 and modified to use closed-loop biomass to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, before January 1, 2007. The taxpayer may claim credit for electricity produced at such qualifying facilities with the credit amount equal to the otherwise allowable credit multiplied by the ratio of the thermal content of the closed loop biomass fuel burned in the facility to the thermal content of all fuels burned in the facility.

Qualifying geothermal energy facilities are facilities using geothermal deposits to produce electricity that are placed in service after the date of enactment and before January 1, 2007. Qualifying solar energy facilities are facilities using solar energy to generate electricity that are placed in service after the date of enactment and before January 1, 2007. In the case of qualifying geothermal energy facilities and qualifying solar energy facilities, taxpayers may claim the otherwise allowable credit for the five-year period commencing when the facility is placed in service.

A qualified small irrigation power facility is a facility originally placed in service after the date of enactment and before January 1, 2007. A small irrigation power facility is a facility that generates electric power through an irrigation system canal or ditch without any dam or impoundment of water. The installed capacity of a qualified facility is less than five megawatts.

A qualified biosolids and sludge facility is a facility originally placed in service after the date of enactment and before January 1, 2007. A biosolids and sludge facility is a facility that uses the waste heat from the incineration of biosolids and sludge to produce electricity. For example, if the taxpayer conveys biosolids and sludge into a glass furnace for the purpose of stabilizing the inorganic contents of the biosolids and sludge in an amorphous glass matrix (and potentially selling the resulting glass aggregates), and the taxpayer uses the waste heat from the glass furnace to generate steam to power a turbine and produce electricity, the electricity produced would be from a qualified biosolids and sludge facility. In addition, a qualifying biosolids and sludge facility is a facility for which the taxpayer has not claimed credit as a combined heat and power system property as defined elsewhere in this bill.

Municipal solid waste facilities (or units) are facilities (or units) that burn municipal solid waste (garbage) to produce steam to drive a turbine for the production of electricity. Qualifying municipal solid waste facilities (or units) include facilities (or units) placed in service after the date of enactment and before January 1, 2007. In the case of qualifying municipal solid waste facilities (or units), taxpayers may claim the otherwise allowable credit for the five-year period commencing when the facility (or unit) is placed in service.

Biomass is defined as any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from any of forest-related

resources, solid wood waste materials, or agricultural sources. Eligible forest-related resources are mill and harvesting residues, precommercial thinnings, slash, and brush. Solid wood waste materials include waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings. Agricultural sources include orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues. However, qualifying biomass for purposes of this provision does not include municipal solid waste (garbage), gas derived from biodegradation of solid waste, or paper that is commonly recycled. Agricultural waste nutrients are defined as livestock manure and litter, including bedding material for the disposition of manure. Agricultural livestock comprise bovine, swine, poultry, and sheep among others.

Geothermal energy is energy derived from a geothermal deposit which is a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure).

Biosolids and sludge are the residue or solids removed during the treatment of commercial, industrial, or municipal wastewater.

Municipal solid waste is ''solid waste'' as defined in section 2(27) of the Solid Waste Disposal Act.

The provision provides that certain persons (public power systems, electric cooperatives, rural electric cooperatives, and Indian tribes) may sell, trade, or assign to any taxpayer any credits that would otherwise be allowable to that person, if that person were a taxpayer, for production of electricity from a qualified facility owned by such person. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent transfers are not permitted. In addition, any credits that would otherwise be allowable to such person, to the extent provided by the Administrator of the Rural Electrification Administration, may be applied as a prepayment to certain loans or obligations undertaken by such person under the Rural Electrification Act of 1936.

In the case of qualifying open-loop biomass facilities, qualifying closed-loop biomass facilities modified to use closed-loop biomass to co-fire with coal, with other biomass, or with coal and other biomass, and qualifying municipal solid waste facilities, the provision permits a lessee or operator to claim the credit in lieu of the owner of the facilities.

Lastly, the provision repeals the present-law reduction in allowable credit for facilities financed with tax-exempt bonds or with certain loans received under the Rural Electrification Act of 1936. In the case of qualifying closed-loop biomass facilities modified to use closed-loop biomass to co-fire with coal, with other biomass, or with coal and other biomass, the provision repeals the present-law reduction in allowable credit for facilities that receive any subsidy.

EFFECTIVE DATE

The provision generally is effective for electricity produced and sold from qualifying facilities after the date of enactment. For electricity produced from qualifying open-loop biomass facilities originally placed in service prior to the date of enactment, the provision is effective January 1, 2004.

TITLE II—ALTERNATIVE MOTOR VEHICLES AND FUEL INCENTIVES

A. Modifications and Extensions of Provisions Relating to Electric Vehicles, Clean Fuel Vehicles, and Clean-Fuel Vehicle Refueling Property

(Secs. 201, 202, 203, and 204 of the bill and secs. 30 and 179A and new secs. 30B, 30C, and 40A of the Code)

PRESENT LAW

Electric vehicles

A 10-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000 (sec. 30). A qualified electric vehicle is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current, the original use of which commences with the taxpayer, and that is acquired for the use by the taxpayer and not for resale. The full amount of the credit is available for purchases prior to 2002. The credit phases down in the years 2004 through 2006, and is unavailable for purchases after December 31, 2006.

Clean-fuel vehicles

Certain costs of qualified clean-fuel vehicles may be expensed and deducted when such property is placed in service (sec. 179A). Qualified clean fuel vehicle property includes motor vehicles that use certain clean-burning fuels (natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, any other alcohol or ether). The maximum amount of the deduction is $50,000 for a truck or van with a gross vehicle weight over 26,000 pounds or a bus with seating capacities of at least 20 adults; $5,000 in the case of a truck or van with a gross vehicle weight between 10,000 and 26,000 pounds; and $2,000 in the case of any other motor vehicle. Qualified electric vehicles do not qualify for the clean-fuel vehicle deduction. The deduction phases down in the years 2004 through 2006, and is unavailable for purchases after December 31, 2006.

Clean-fuel vehicle refueling property

Clean-fuel vehicle refueling property may be expensed and deducted when such property is placed in service (sec. 179A). Clean-fuel vehicle refueling property comprises property for the storage or dispensing of a clean-burning fuel, if the storage or dispensing is the point at which the fuel is delivered into the fuel tank of a motor vehicle. Clean-fuel vehicle refueling property also includes property for the recharging of electric vehicles, but only if the property is located at a point where the electric vehicle is recharged. Up to $100,000 of such property at each location owned by the taxpayer may be expensed with respect to that location. The deduction is unavailable for costs incurred after December 31, 2006.

REASONS FOR CHANGE

The Committee believes that further investments in alternative fuel and advanced technology vehicles are necessary to transform automotive transportation in the United States to be cleaner, more fuel efficient, and less reliant on petroleum fuels.

Tax benefits provided directly to the consumer to lower the cost of new technology and alternative-fueled vehicles can help lower consumer resistance to these technologies by making the vehicles more price competitive with purely petroleum-based fuel vehicles and creating increased demand for manufacturers to produce the technologies. The eventual goal is mass production and mass-market acceptance of new technology vehicles. The Committee recognizes that creating a number of different credits tailored to each different automotive technology adds complexity to the Internal Revenue Code, but no one technology has established that it alone provides the solution. Therefore, it is appropriate to provide tax benefits tailored to specific vehicle technologies, as long as the vehicle's engine technology directly replaces gasoline and diesel fuel with an alternative energy source.

The Committee expects that hybrid motor vehicles and dedicated alternative fuel vehicles are the near-term technological advancement that will replace gasoline- and diesel-burning engines with alternative-powered engines, and electrical and fuel cell vehicles will be the longterm technological advancement.

Applying these technologies to medium and heavy-duty trucks and buses is also important for transforming the transportation sector to a cleaner, more fuel-efficient sector less reliant on petroleum-based fuels. Therefore, it is appropriate to use tax incentives to encourage the introduction of advanced vehicle technologies in large trucks and buses.

In addition, because new vehicle technologies require new fuels and infrastructure to deliver those fuels, investments in new technology automobiles alone are not sufficient to transform the market to accept these vehicles. Therefore, substantial investments in new refueling stations and new fuels are also necessary to make alternative vehicle technologies feasible.

EXPLANATION OF PROVISION

Alternative motor vehicle credits

The bill provides a credit for the purchase of a new qualified fuel cell motor vehicle, a new qualified hybrid motor vehicle, and a new qualified alternative fuel motor vehicle. In general the provision provides that the buyer claims the credit, unless the buyer is a tax-exempt entity in which case the seller or lessor of the vehicle may claim the credit. The taxpayer may carry forward unused credits for 20 years or carry unused credits back for three years (but not to any taxable year beginning before the date of enactment). Qualified vehicles are vehicles placed in service before 2007 (2012 in the case of fuel cell vehicles). Any deduction otherwise allowable under sec. 179A is reduced by the amount of credit allowable.

Fuel cell vehicles

A qualifying fuel cell vehicle is a motor vehicle that is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle and may or may not require reformation prior to use. The amount of credit for the purchase of a fuel cell vehicle is determined by a base credit amount that depends upon the weight class of the vehicle and, in the case of automobiles or light trucks, an additional credit amount that depends upon the rated fuel economy of the vehicle compared to a base fuel economy. For these purposes the base fuel economy is the 2002 model year city fuel economy rating for vehicles of various weight classes (see below). Table 1 below, shows the base credit amounts.

TABLE 1.—BASE CREDIT AMOUNT FOR FUEL CELL VEHICLES

Vehicle Gross Weight Rating in Pounds	Credit Amount
Vehicle = 8,500	$4,000
8,500 < vehicle = 14,000	10,000
14,000 < vehicle = 26,000	20,000
26,000 < vehicle	40,000

Table 2, below, shows the additional credits for passenger automobiles or light trucks.

TABLE 2.—CREDIT FOR QUALIFYING FUEL CELL VEHICLES

If Fuel Economy of the Fuel Cell Vehicle Is:	Credit	
	At least	But less than
$1,000	150% of base fuel economy	175% of base fuel economy.
$1,500	175% of base fuel economy	200% of base fuel economy.
$2,000	200% of base fuel economy	225% of base fuel economy.
$2,500	225% of base fuel economy	250% of base fuel economy.
$3,000	250% of base fuel economy	275% of base fuel economy.
$3,500	275% of base fuel economy	300% of base fuel economy.
$4,000	300% of base fuel economy.	

Hybrid vehicles

A qualifying hybrid vehicle is a motor vehicle that draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine or heat engine using combustible fuel and a rechargeable energy storage system (e.g., batteries). The amount of credit for the purchase of a hybrid vehicle is the sum of two components. In the case of an automobile or light truck, the amount of credit is the sum of a base credit amount that varies with the amount of power available from the rechargeable storage system and a fuel economy credit amount that varies with the rated fuel economy of the vehicle compared to a 2002 model year standard. In addition, the vehicle must meet or exceed the EPA Tier II, bin 5 emissions standards. In the case of a heavy duty hybrid motor vehicle (a vehicle weighing more than 8,500 pounds), the amount of credit is the sum of a base credit amount that varies, by vehicle weight class, with the amount of power available from the rechargeable storage system and an additional credit for early adoption of the technology that varies with the model year of the vehicle purchased.

For these purposes, a vehicle's power available from its rechargeable energy storage system as a percentage of maximum available power is calculated as the maximum value available from the battery or other energy storage device during a standard power test, divided by the sum of the battery or other energy storage device and the SAE net power of the heat engine.

Table 3, below, shows the base credit amounts for automobiles and light trucks.

TABLE 3.—HYBRID VEHICLE BASE CREDIT AMOUNT FOR AUTOMOBILES AND LIGHT TRUCKS, DEPENDENT UPON THE POWER AVAILABLE FROM THE RECHARGEABLE ENERGY STORAGE SYSTEM AS A PERCENTAGE OF THE VEHICLES MAXIMUM AVAILABLE POWER

Base Credit Amount	If Rechargeable Energy Storage System Provides:	
	At least	But less than
$250	4% of maximum available power.	10% of maximum available power.
$500	10% of maximum available power.	20% of maximum available power.
$750	20% of maximum available power.	30% of maximum available power.
$1,000	30% of maximum available power.	

Table 4, below, shows the additional fuel economy credit available to a hybrid passenger automobile or light truck whose fuel economy (on a gasoline gallon equivalent basis) exceeds that of a base fuel economy. For these purposes the base fuel economy is the 2002 model year city fuel economy rating for vehicles of various weight classes (see below).

TABLE 4.—ADDITIONAL FUEL ECONOMY CREDIT FOR HYBRID VEHICLES

Credit	If Fuel Economy of the Hybrid Vehicle Is:	at least
		but less than
$500	125% of base fuel economy.	150% of base fuel economy.
$1,000	150% of base fuel economy.	175% of base fuel economy.

TABLE 4.—ADDITIONAL FUEL ECONOMY CREDIT FOR HYBRID VEHICLES—Continued

Credit	If Fuel Economy of the Hybrid Vehicle Is:	at least
		but less than
$1,500	175% of base fuel economy.	200% of base fuel economy.
$2,000	200% of base fuel economy.	225% of base fuel economy.
$2,500	225% of base fuel economy.	250% of base fuel economy.
$3,000	250% of base fuel economy	

Table 5 below, shows the base credit amounts for heavy duty hybrid vehicles weighing 14,000 pounds or less.

TABLE 5.—HYBRID VEHICLE BASE CREDIT AMOUNT FOR HEAVY DUTY VEHICLES WEIGHING NOT MORE THAN 14,000 POUNDS

Base Credit Amount	If Rechargeable Energy Storage System Provides:	
	At least	But less than
$1,000	20% of maximum available power.	30% of maximum available power.
$1,750	30% of maximum available power.	40% of maximum available power.
$2,000	40% of maximum available power.	50% of maximum available power.
$2,250	50% of maximum available power.	60% of maximum available power.
$2,500	60% of maximum available power	

In the case of heavy duty hybrid vehicles weighing not more than 14,000 pounds, the additional credit amount for early adoption of the 2007 enission standards technology is $3,000 for model year 2003 vehicles, $2,500 for model year 2004 vehicles, $2,000 for model year 2005 vehicles, and $1,500 or model year 2006 vehicles.

Table 6, below, shows the base credit amounts for heavy duty hybrid vehicles weighing more than 14,000 pounds but not more than 26,000 pounds.

TABLE 6.—HYBRID VEHICLE BASE CREDIT AMOUNT FOR HEAVY DUTY HYBRID VEHICLES WEIGHING MORE THAN 14,000 POUNDS, BUT NOT MORE THAN 26,000 POUNDS

Base Credit Amount	If Rechargeable Energy Storage System Provides:	
	At least	But less than
$4,000	20% of maximum available power.	30% of maximum available power.
$4,500	30% of maximum available power.	40% of maximum available power.
$5,000	40% of maximum available power.	50% of maximum available power.
$5,500	50% of maximum available power.	60% of maximum available power.
$6,000	60% of maximum available power	

In the case of heavy duty hybrid vehicles weighing more than 14,000 pounds but not more than 26,000 pounds, the additional credit amount for early adoption of the 2007 emission standards technology is $7,750 for model year 2003 vehicles, $6,500 for model year 2004 vehicles, $5,250 for model year 2005 vehicles, and $4,000 for model year 2006 vehicles.

Table 7, below, shows the base credit amounts for heavy duty hybrid vehicles weighing more than 26,000 pounds.

TABLE 7.—HYBRID VEHICLE BASE CREDIT AMOUNT FOR HEAVY DUTY HYBRID VEHICLES WEIGHING MORE THAN 26,000 POUNDS

Base Credit Amount	If Rechargeable Energy Storage System Provides:	
	At least	But less than
$6,000	20% of maximum available power.	30% of maximum available power.
$7,000	30% of maximum available power.	40% of maximum available power.
$8,000	40% of maximum available power.	50% of maximum available power.
$9,000	50% of maximum available power.	60% of maximum available power.
$10,000 ...	60% of maximum available power	

In the case of heavy duty hybrid vehicles weighing more than 26,000 pounds, the additional credit amount for early adoption of the 2007 emission standards technology is $12,000 for model year 2003 vehicles, $10,000 for model year 2004 vehicles, $8,000 for model year 2005 vehicles, and $6,000 for model year 2006 vehicles.

Alternative fuel vehicle

The credit for the purchase of a new alternative fuel vehicle is 40 percent of the incremental cost of such vehicle, plus an additional 30 percent if the vehicle meets certain emissions standards, but not more than between $5,000 and $40,000 depending upon the weight of the vehicle. Table 8, below, shows the maximum permitted incremental cost for the purpose of calculating the credit for alternative fuel vehicles by vehicle weight class.

TABLE 8.—MAXIMUM ALLOWABLE INCREMENTAL COST FOR CALCULATION OF ALTERNATIVE FUEL VEHICLE CREDIT

Vehicle Gross Weight Rating in Pounds	Maximum Allowable Incremental Cost
Vehicle = 8,500	$5,000
8,500 < vehicle = 14,000	10,000
14,000 < vehicle = 26,000	25,000
26,000 < vehicle	40,000

Alternative fuels comprise compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid fuel that is at least 85 percent methanol. Qualifying alternative fuel motor vehicles are vehicles that operate only on qualifying alternative fuels and are incapable of operating on gasoline or diesel (except in the extent gasoline or diesel fuel is part of a qualified mixed fuel, described below).

Certain mixed fuel vehicles, that is vehicles that use a conbination of an alternative fuel and a petroleum-based fuel, are eligible for a reduced credit. If the vehicle operates on a mixed fuel that is at least 75 percent alternative fuel, the vehicle is eligible for 70 percent of the otherwise allowable alternative fuel vehicle credit. If the vehicle operates on a mixed fuel that is at least 90 percent alternative fuel, the vehicle is eligible for 90 percent of the otherwise allowable alternative fuel vehicle credit.

Base fuel economy

The base fuel economy is the Environmental Protection Agency's unadjusted 2002 model year city fuel economy for vehicles by inertia weight class by vehicle type. The ''vehicle inertia weight class'' is that defined in regulations prescribed by the Environmental Protection Agency for purposes of Title II of the Clean Air Act. Table 9, below, shows the 2002 model year city fuel economy for vehicles by type and by inertia weight class.

TABLE 9.—2002 MODEL YEAR CITY FUEL ECONOMY

Vehicle Inertia Weight Class (pounds)	Passenger Automobile (miles per gallon)	Light Truck (miles per gallon)
1,500	45.2	39.4
1,750	45.2	39.4
2,000	39.6	35.2
2,250	35.2	31.8
2,500	31.7	29.0
2,750	28.8	26.8
3,000	26.4	24.9
3,500	22.6	21.8
4,000	19.8	19.4
4,500	17.6	17.6
5,000	15.9	16.1
5,500	14.4	14.8
6,000	13.2	13.7
6,500	12.2	12.8
7,000	11.3	12.1
8,500	11.3	12.1

Modification of credit for qualified electric vehicles

The bill repeals the phaseout of the credit for electric vehicles under present law. The provision also modifies present law to provide for a credit equal to the lesser of $1,500 or 10 percent of the manufacturer's suggested retail price of certain vehicles that conform to the Motor Vehicle Safety Standard 500. For all other electric vehicles, Table 10, below describes the credit.

TABLE 10.—CREDIT FOR QUALIFYING BATTERY ELECTRIC VEHICLES

Vehicle Gross Weight Rating in Pounds	Credit Amount
Vehicle = 8,500	$3,500
8,500 < vehicle = 14,000	10,000
14,000 < vehicle = 26,000	20,000
26,000 < vehicle	40,000

If an electric vehicle weighing not more than 8,500 pounds has an estimated driving range of at least 100 miles on a single charge of the vehicle's batteries or if it is capable of a payload capacity of at least 1,000 pounds, then the credit amount in Table 10 is $6,000.

In the case of property purchased by tax-exempt persons, the seller may claim the credit. The provision allows taxpayers to carry forward unused credits for 20 years or carry unused credits back for three (but not to any taxable year before the date of enactment).

Extension of present-law section 179A

The bill extends the sunset date of the present law deduction for costs of qualified clean-fuel vehicle and clean-fuel vehicle refueling property through December 31, 2007 (December 31, 2011 in the case of property relating to hydrogen). The provision modifies the definition of refueling property in the case of property relating to hydrogen to include property for the production of hydrogen.

The phase-down of present law for clean fuel vehicles is modified such that the taxpayer may claim 75 percent of the otherwise allowable deductible in 2004 and 2005 (2004 through 2009 in the case of property relating to hydrogen), 50 percent of the otherwise allowable deduction in 2006 (2010 in the case of property relating to hydrogen), and 25 percent of the otherwise allowable deduction in 2007 (2011 in the case of property relating to hydrogen).

Credit for installation of alternative fueling stations

The bill permits taxpayers to claim a 50-percent credit for the cost of installing clean-fuel vehicle refueling property to be used in a trade or business of the taxpayer or installed at the principal residence of the taxpayer. In the case of retail clean-fuel vehicle refueling property the allowable credit may not exceed $30,000. In the case of residential clean-fuel vehicle refueling property the allowable credit may not exceed $1,000. The taxpayer's basis in the property is reduced by the amount of the credit and the taxpayer may not claim deductions under section 179A with respect to property for which the credit is claimed. In the case of refueling property installed on property owned or used by a tax-exempt person, the taxpayer that installs the property may claim the credit. To be eligible for the credit, the property must be placed in service before January 1, 2008 (January 1, 2012 in the case of hydrogen). The credit allowable in the taxable year cannot exceed the difference between the taxpayer's regular tax (reduced by certain other credits) and the taxpayer's tentative minimum tax. The taxpayer may carry forward unused credits for 20 years.

Credit for retail sale of alternative fuels

The bill permits taxpayers to claim a credit equal to the gasoline gallon equivalent of 30 cents per gallon of alternative fuel sold in 2003, 40 cents per gallon in 2004, 50 cents per gallon in 2005, and 50 cents per gallon in 2006. Qualifying alternative fuels are compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid mixture consisting of at least 85 percent methanol or ethanol. The gasoline gallon equivalency of any alternative fuel is determined by reference to the British thermal unit content of the alternative fuel compared to a gallon of gasoline. The credit may be claimed for sales prior to January 1, 2007. Under the provision, the credit is part of the general business credit.

EFFECTIVE DATE

The provisions relating to the credit for new fuel cell motor vehicles, hybrid motor vehicles, and alternative fuel motor vehicles, the credit for battery electric vehicles, the credit for alternative fuel vehicle refueling property, and deductions for clean fuel vehicles and clean fuel refueling property are effective for property placed in service after the date of enactment, in taxable years ending after the date of enactment. The credit for retail sales of alternative fuels is effective for sales of fuels after the date of enactment, in taxable years ending after the date of enactment.

B. MODIFICATIONS TO SMALL PRODUCER ETHANOL CREDIT

(Sec. 205 of the bill and secs. 38, 40, 87, and 469 of the Code)

PRESENT LAW

Small producer credit

Present law provides several tax benefits for ethanol and methanol produced from renewable sources (e.g., biomass) that are used as a motor fuel or that are blended with other fuels (e.g., gasoline) for such a use. In the case of ethanol, a separate 10-cents-per-gallon credit for small producers, defined generally as persons whose production does not exceed 15 million gallons per year and whose production capacity does not exceed 30 million gallons per year. The alcohol fuels tax credits are includible in income. This credit, like tax credits generally, may not be used to offset alternative minimum tax liability. The credit is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally. The alcohol fuels tax credit is scheduled to expire after December 31, 2007.

Taxation of cooperatives and their patrons

Under present law, cooperatives in essence are treated as pass-through entities in that the cooperative is not subject to corporate income tax to the extent the cooperative timely pays patronage dividends. Under present law, the only excess credits that may be flowed-through to cooperative patrons are the rehabilitation credit (sec. 47), the energy property credit (sec. 48(a)), and the reforestation credit (sec. 48(b)).

REASONS FOR CHANGE

The Committee believes provisions allowing greater flexibility in utilizing the benefits of the small ethanol producer credit are consistent with the objective of the bill to increase availability of alternative fuels.

EXPLANATION OF PROVISION

The provision makes several modifications to the rules governing the small producer ethanol credit. First, the provision liberalizes the definition of an eligible small producer to include persons whose production capacity does not exceed 60 million gallons. Second, the provision allows cooperatives to elect to pass-through the small ethanol producer credits to its patrons. The credit allowed to a particular patron is that proportion of the credit that the cooperative elects to pass-through for that year as the amount of patronage of that patron for that year bears to total patronage of all patrons for that year.

Third, the provision repeals the rule that includes the small producer credit in income of taxpayers claiming it and liberalizes the ordering and carryforward/carryback rules for the small producer ethanol credit. Fourth, the provision allows the small producer credit to be claimed against the alternative minimum tax. Finally, the provision provides that the small producer ethanol credit is not treated as derived from a passive activity under the Code rules restricting credits and deductions attributable to such activities.

EFFECTIVE DATE

The provision is effective for taxable years beginning after date of enactment.

C. INCREASED FLEXIBILITY IN ALCOHOL FUELS INCOME TAX CREDIT

(Sec. 206 of the bill and sec. 40 of the Code)

PRESENT LAW

An 18.4 cents-per-gallon excise tax is imposed on gasoline. The tax is imposed when the fuel is removed from a refinery unless the removal is to a bulk transportation facility (e.g., removal by pipeline or barge to a registered terminal). In the case gasoline removed in bulk by registered parties, tax is imposed when the gasoline is removed from the terminal facility, typically by truck (i.e., ''breaks bulk''). If gasoline is sold to an unregistered party before it is removed from a terminal, tax is imposed on that sale. When the gasoline subsequently breaks bulk, a second tax is imposed. The payor of the second tax may file a refund claim if it can prove payment of the first tax. The party liable for payment of the gasoline excise tax is called a ''position holder,'' defined as the owner of record inside the refinery or terminal facility.

A 52-cents-per-gallon income tax credit is allowed for ethanol used as a motor fuel (the ''alcohol fuels credit''). The benefit of the alcohol fuels tax credit may be claimed as a reduction in excise tax payments when the ethanol is blended with gasoline (''gasohol''). The reduction is based on the amount of ethanol contained in the gasohol. The excise tax benefits apply to gasohol blends of 90 percent gasoline/ 10 percent ethanol, 92.3 percent gasoline/7.7 percent ethanol, or 94.3 percent gasoline/5.7 percent ethanol. The income tax credit is based on the amount of alcohol contained in the blended fuel.

Ethyl tertiary butyl ether (''ETBE'') is an ether that is manufactured using ethanol. Unlike ethanol, ETBE can be blended with gasoline before the gasoline enters a pipeline because ETBE does not result in contamination of fuel with water while in transport. Treasury Department regulations provide that gasohol blenders may claim the income tax credit and excise tax rate reductions for ethanol used in the production of ETBE. The regulations also provide a special election allowing refiners to claim the benefit of the excise tax rate reduction even though the fuel being removed from terminals does not contain the requisite percentages of ethanol for claiming the excise tax rate reduction.

REASONS FOR CHANGE

The Committee believes the tax benefits currently available to ethanol used in the production of ETBE should be clarified statutorily. In addition, the Committee believes it appropriate to increase the flexibility by which the alcohol fuels credit may be claimed for alcohol used in the production of ETBE.

EXPLANATION OF PROVISION

The provision permits a taxpayer to transfer the alcohol fuels credit with respect to alcohol used in the production of ETBE to any registered position holder liable for excise taxes imposed under section 4081. Such position holder also must obtain from the transferor taxpayer a certificate that identifies the amount of alcohol used in the production of ETBE. The Secretary is to prescribe regulations as necessary to ensure that the credit is claimed once and not reassigned by the position holder.

EFFECTIVE DATE

The provision is effective date of enactment.

D. INCOME TAX CREDIT FOR BIODIESEL FUEL MIXTURES

(Sec. 207 of the bill and new sec. 40B of the Code)

PRESENT LAW

No income tax credit or excise tax rate reduction is provided for biodiesel fuels under present law. However, a 52-cents-per-gallon income tax credit (the ''alcohol fuels credit'') is allowed for ethanol and methanol (derived from renewable sources) when the alcohol is used as a highway motor fuel. The benefit of this income tax credit may be claimed through reductions in excise taxes paid on alcohol fuels. In the case of alcohol blended with other fuels (e.g., gasoline), the excise tax rate reductions are allowable only for blends of 90 percent gasoline/ 10 percent alcohol, 92.3 percent gasoline/7.7 percent alcohol, or 94.3 percent gasoline/5.7 percent alcohol. These present law provisions are scheduled to expire in 2007.

REASONS FOR CHANGE

The Committee believes that providing a new income tax credit for biodiesel fuel will promote energy self-sufficiency and also is consistent with the environmental objectives of the bill.

EXPLANATION OF PROVISION

The provision provides a new income tax credit for qualified biodiesel mixtures. A qualified biodiesel mixture is a mixture of diesel fuel and biodiesel that (1) is sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture. Biodiesel is monoalkyl esters of long chain fatty acids for use in diesel-powered engines and which meet the registration requirements of the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. sec. 7545) and the American Society of Testing and Materials D6751. Agri-biodiesel means biodiesel derived solely from virgin oils, including esters derived from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, or animal fats. Recycled biodiesel is biodiesel derived from nonvirgin vegetable oils or nonvirgin animal fats. Virgin vegetable oils or animal fats mixed with recycled biodiesel will be treated as recycled biodiesel.

The biodiesel mixture credit is the sum of the products of the biodiesel mixture rate for each qualified biodiesel mixture and the number of gallons of such mixture of the taxpayer for the taxable year. The per gallon biodiesel mixture rate for agri-biodiesel equals one cent for each percentage point of biodiesel in the qualified biodiesel mixture, subject to a maximum credit of 20 cents per blended gallon of fuel. Agri-biodiesel used in the production of a qualified biodiesel mixture is taken into account only if a certification from the producer of the agribiodiesel which identifies the product produced is obtained. The per gallon biodiesel mixture rate for recycled biodiesel equals 0.5 cent for each percentage point of biodiesel in the qualified biodiesel mixture, subject to a maximum credit of 10 cents per blended gallon of fuel.

The amount of the biodiesel mixture credit is includible in income. The credit may not be carried back to a taxable year beginning before date of enactment.

EFFECTIVE DATE

The biodiesel mixture credit is effective for biodiesel fuel sold after date of enactment, and before January 1, 2006.

E. ALCOHOL FUEL AND BIODIESEL MIXTURES EXCISE TAX CREDIT

(Sec. 208 of the bill, secs. 40, 4081, 6427, 9503, and new sec. 6426 of the Code)

PRESENT LAW

Alcohol fuels income tax credit

The alcohol fuels credit is the sum of three credits: the alcohol mixture credit, the alcohol credit and the small ethanol producer credit. Generally, the alcohol fuels credit expires after December 31, 2007.

A taxpayer (generally a petroleum refiner, distributor, or marketer) who mixes ethanol with gasoline (or a special fuel) is an ''ethanol blender.'' Ethanol blenders are eligible for an income tax credit of 52 cents per gallon of ethanol used in the production of a qualified mixture (the ''alcohol mixture credit''). A qualified mixture means a mixture of alcohol and gasoline, (or of alcohol and a special fuel) sold by the blender as fuel, or used as fuel by the blender in producing the mixture. The term alcohol includes methanol and ethanol but does not include (1) alcohol produced from petroleum, natural gas, or coal (including peat), or (2) alcohol with a proof of less than 150. Businesses also may reduce their income taxes by 52 cents for each gallon of ethanol (not mixed with gasoline or other special fuel) that they sell at the retail level as vehicle fuel or use themselves as a fuel in their trade or business (''the alcohol credit''). The 52-cents-per-gallon income tax credit rate is scheduled to decline to 51 cents per gallon during the period 2005 through 2007. For blenders using an alcohol other than ethanol, the rate is 60 cents per gallon.

A separate income tax credit is available for small ethanol producers (the ''small ethanol producer credit''). A small ethanol producer is defined as a person whose ethanol production capacity does not exceed 30 million gallons per year. The small ethanol producer credit is 10 cents per gallon of ethanol produced during the taxable year for up to a maximum of 15 million gallons.

The credits that comprise alcohol fuels tax credit are includible in income. The credit may not be used to offset alternative minimum tax liability. The credit is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally.

Excise tax reductions for alcohol mixture fuels

Generally, motor fuels tax rates are as follows:

Gasoline	18.4 cents per gallon.
Diesel fuel and kerosene	24.4 cents per gallon.
Special motor fuels	18.4 cents per gallon generally.

Alcohol-blended fuels are subject to a reduced rate of tax. The benefits provided by the alcohol fuels income tax credit and the excise tax reduction are integrated such that the alcohol fuels credit is reduced to take into account the benefit of any excise tax reduction.

Gasohol

Registered ethanol blenders may forgo the full income tax credit and instead pay reduced rates of excise tax on gasoline that they purchase for blending with ethanol. Most of the benefit of the alcohol fuels credit is claimed through the excise tax system.

The reduced excise tax rates apply to gasohol upon its removal or entry. Gasohol is defined as a gasoline/ethanol blend that contains 5.7 percent ethanol, 7.7 percent ethanol, or 10 percent ethanol. The Federal excise tax on gasoline is 18.4 cents per gallon. For the calendar year 2003, the following reduced rates apply to gasohol:

5.7 percent ethanol	15.436 cents per gallon.
7.7 percent ethanol	14.396 cents per gallon.
10.0 percent ethanol	13.200 cents per gallon.

Reduced excise tax rates also apply when gasoline is being purchased for the production of ''gasohol.'' When gasoline is purchased for blending into gasohol, the rates above are multiplied by a fraction (e.g., 10/9 for 10-percent gasohol) so that the increased volume of motor fuel will be subject to tax. The reduced tax rates apply if the person liable for the tax is registered with the IRS and (1) produces gasohol with gasoline within 24 hours of removing or entering the gasoline or (2) gasoline is sold upon its removal or entry and such person has an unexpired certificate from the buyer and has no reason to believe the certificate is false.

Qualified methanol and ethanol fuels

Alcohol produced from a substance other than petroleum or natural gas

Qualified methanol or ethanol fuel is any liquid that contains at least 85 percent methanol or ethanol or other alcohol produced from a substance other than petroleum or natural gas. These fuels are taxed at reduced rates. The rate of tax on qualified methanol is 12.35 cents per gallon. The rate on qualified ethanol in 2003 and 2004 is 13.15 cents. From January 1, 2005 through September 30, 2007, the rate of tax on qualified ethanol is 13.25 cents.

Alcohol produced from natural gas

A mixture of methanol, ethanol, or other alcohol produced from natural gas that consists of at least 85 percent alcohol is also taxed at reduced rates. For mixtures not containing ethanol, the applicable rate of tax is 9.25 cents per gallon before October 1, 2005. In all other cases, the rate is 11.4 cents per gallon. After September 31, 2005, the rate is reduced to 2.15 cents per gallon when the mixture does not contain ethanol and 4.3 cents per gallon in all other cases.

Blends of alcohol and diesel fuel or special motor fuels

A reduced rate of tax applies to diesel fuel or kerosene that is combined with alcohol as long as at least 10 percent of the finished mixture is alcohol. If none of the alcohol in the mixture is ethanol, the rate of tax is 18.4 cents per gallon. For alcohol mixtures containing ethanol, the rate of tax in 2003 and 2004 is 19.2 cents per gallon and for 2005 through September 30, 2007, the rate for ethanol mixtures is 19.3 cents per gallon. Fuel removed or entered for use in producing a 10 percent diesel-alcohol fuel mixture (without ethanol), is subject to a tax of 20.44 cents. The rate of tax for fuel removed or entered to produce a 10 percent diesel-ethanol fuel mixture is 21.333 cents per gallon for 2003 and 2004 and 21.444 cents per gallon for the period January 1, 2005 through September 30, 2007.

Special motor fuel (nongasoline) mixtures with alcohol also are taxed at reduced rates.

Aviation fuel

Noncommercial aviation fuel is subject to a tax of 21.9 cents per gallon. Fuel mixtures containing at least 10 percent alcohol are taxed at lower rates. In the case of 10 percent ethanol mixtures, any sale or use during 2003 and 2004, the 21.9 cents is reduced by 13.2

cents (for a tax of 8.7 cents per gallon), for 2005, 2006, and 2007 the reduction is 13.1 cents (for a tax of 8.8 cents per gallon) and is reduced by 13.4 cents in the case of any sale during 2008 or thereafter. For mixtures not containing ethanol, the 21.9 cents is reduced by 14 cents for a tax of 7.9 cents. These reduced rates expire after September 30, 2007.

When aviation fuel is purchased for blending with alcohol, the rates above are multiplied by a fraction (10/9) so that the increased volume of aviation fuel will be subject to tax.

Refunds and payments

If fully taxed gasoline (or other taxable fuel) is used to produce a qualified alcohol mixture, the Code permits the blender to file a claim for a quick excise tax refund. The refund is equal to the difference between the gasoline (or other taxable fuel) excise tax that was paid and the tax that would have been paid by a registered blender on the alcohol fuel mixture being produced. Generally, the IRS pays these quick refunds within 20 days. Interest accrues if the refund is paid more than 20 days after filing. A claim may be filed by any person with respect to gasoline, diesel fuel, or kerosene used to produce a qualified alcohol fuel mixture for any period for which $200 or more is payable and which is not less than one week.

Ethyl tertiary—butyl ether (ETBE)

Ethyl tertiary butyl ether (''ETBE'') is an ether that is manufactured using ethanol. Unlike ethanol, ETBE can be blended with gasoline before the gasoline enters a pipeline because ETBE does not result in contamination of fuel with water while in transport. Treasury Department regulations provide that gasohol blenders may claim the income tax credit and excise tax rate reductions for ethanol used in the production of ETBE. The regulations also provide a special election allowing refiners to claim the benefit of the excise tax rate reduction even though the fuel being removed from terminals does not contain the requisite percentages of ethanol for claiming the excise tax rate reduction.

Highway Trust Fund

With certain exceptions, the taxes imposed by section 4041 (relating to retail taxes on diesel fuels and special motor fuels) and section 4081 (relating to tax on gasoline, diesel fuel and kerosene) are credited to the Highway Trust Fund. In the case of alcohol fuels, 2.5 cents per gallon of the tax imposed is retained in the General Fund. In the case of a taxable fuel taxed at a reduced rate upon removal or entry prior to mixing with alcohol, 2.8 cents of the reduced rate is retained in the General Fund.

Biodiesel

If biodiesel is used in the production of blended taxable fuel, the Code imposes tax on the removal or sale of the blended taxable fuel. In addition, the Code imposes tax on any liquid other than gasoline sold for use or used as a fuel in a diesel-powered highway vehicle or diesel powered train unless tax was previously imposed and not refunded or credited. If biodiesel that was not previously taxed or exempt is sold for use or used as a fuel in a diesel-powered highway vehicle or a diesel-powered train, tax is imposed. There are no reduced excise tax rates for biodiesel.

REASONS FOR CHANGE

The United States seeks to reduce its dependence on foreign oil through, among other means, the use of alternative fuels. The Committee believes that the goal of promoting the use of alternative fuels can be achieved without decreasing the revenues available for improving the nation's highway and bridge network. As a result, the Committee believes that it is appropriate that the entire amount of alcohol fuel taxes be devoted to the Highway Trust Fund. Highway vehicles using alcohol-blended fuels contribute to the wear and tear of the same highway system used by gasoline or diesel vehicles. Therefore, the Committee believes that alcohol-blended fuels should be taxed at rates equal to gasoline or diesel.

EXPLANATION OF PROVISION

Overview

The provision eliminates reduced rates of excise tax for most alcohol-blended fuels. In place of reduced rates, the provision creates two new credits: the alcohol fuel mixture credit and the biodiesel mixture credit. The sum of these credits may be taken against the tax imposed on taxable fuels (by section 4081). Alternatively, in lieu of a credit against tax, the provision allows taxpayers to file a claim for payment equal to the amount of these credits. The provision also eliminates the General Fund retention of certain taxes on alcohol fuels, and credits these taxes to the Highway Trust Fund and extends the present-law alcohol fuels credit through December 31, 2010.

Alcohol fuel mixture excise tax credit

The provision eliminates the reduced rates of excise tax for most alcohol-blended fuels. Under the provision, the full rate of tax for taxable fuels is imposed on both alcohol fuel mixtures and the taxable fuel used to produce an alcohol fuel mixture.

In lieu of the reduced excise tax rates, the provision provides for an excise tax credit, the alcohol fuel mixture credit. The alcohol fuel mixture credit is 52 cents for each gallon of alcohol used by a person in producing an alcohol fuel mixture. The credit declines to 51 cents per gallon after calendar year 2004. For mixtures not containing ethanol (renewable source methanol), the credit is 60 cents per gallon. Equivalent amounts of these credits are to be credited to the Highway Trust Fund.

For purposes of the alcohol fuel mixture credit, an ''alcohol fuel mixture'' is (1) a mixture of alcohol and a taxable fuel and (2) sold for use or used as a fuel by the taxpayer producing the mixture. Alcohol for this purpose includes methanol, ethanol, and alcohol gallon equivalents of ETBE or other ethers produced from such alcohol. It does not include alcohol produced from petroleum, natural gas or coal (including peat), or alcohol with a proof of less than 190 (determined without regard to any added denaturants). Taxable fuel is gasoline, diesel and kerosene.

The excise tax credit is coordinated with the alcohol fuels income tax credit and is available through December 31, 2010.

Biodiesel mixture excise tax credit

The provision provides an excise tax credit for agri-biodiesel mixtures. The credit is one dollar for the first gallon of agri-biodiesel used by the taxpayer in producing at least five gallons of qualified biodiesel mixture. The credit is not available for any sale or use for any period after December 31, 2005. This excise tax credit is coordinated with income tax credit for biodiesel such that credit for the same biodiesel cannot be claimed for both income and excise tax purposes.

Payments with respect to tax-paid fuel used to produce qualified mixtures

When tax paid fuel is used to produce an alcohol fuel mixture or qualified biodiesel mixture that is sold or used in the trade or business of the person who makes such a mixture, a payment in an amount equal to the alcohol fuel mixture credit or biodiesel mixture credit is available. This refund provision is available to persons using gasoline, diesel fuel or kerosene to make an alcohol fuel mixture or qualified biodiesel mixture. Specifically, if any gasoline, diesel fuel, or kerosene on which tax was imposed by section 4081 is used by any person in producing an alcohol fuel mixture or qualified biodiesel mixture which is sold or used in such person's trade or business, the Secretary is to pay to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such gasoline, diesel fuel or kerosene.

If such claims are not paid within 45 days, the claim is to be paid with interest. The provision also provides that in the case of an electronic claim, if such claim is not paid within 20 days, the claim is to be paid with interest. The refund provision is coordinated with other refund provisions and the excise tax credits for alcohol fuel mixtures and biodiesel mixtures. The provision does not apply with respect to alcohol fuel mixtures sold or used after December 31, 2010 or qualified biodiesel mixtures sold or used after December 31, 2005.

Highway Trust Fund

The provision eliminates the requirement that 2.5 and 2.8 cents per gallon of excise taxes be retained in the General Fund so that the full amount of tax on alcohol fuels is credited to the Highway Trust Fund. The provision also authorizes the full amount of fuel taxes to be appropriated to the Highway Trust Fund without reduction for amounts equivalent to the excise tax credits allowed for alcohol fuel mixtures and biodiesel mixtures.

Alcohol fuels income tax credit

The provision extends the alcohol fuels credit (sec. 40) through December 31, 2010.

EFFECTIVE DATE

The provision is effective for fuel sold or used after September 30, 2003.

F. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-FREE SALES ENTERPRISES

(Sec. 209 of the bill)

PRESENT LAW

A duty-free sales enterprise that meets certain conditions may sell and deliver for export from the customs territory of the United States duty-free merchandise. Duty-free merchandise is merchandise sold by a duty-free sales enterprise on which neither federal duty nor federal tax has been assessed pending exportation from the customs territory of the United States. Conditions for qualifying as a duty-free enterprise include (but are limited to) locations within a specified distance from a port of entry, establishment of procedures for ensuring that merchandize is exported from the United States, and prominent posting of rules concerning duty-free treatment of merchandise. The duty-free statute does not contain any limitation on what goods may qualify for duty-free treatment.

REASONS FOR CHANGE

The Committee understands that in some circumstances individuals purchase motor fuels at a duty free facility that is located in the United States, drive briefly outside of the United States, and return to the United States. The Committee believes that motor fuel sold at duty-free enterprises should support the financing of the U.S. highway system as do other motor fuel sales in the United States.

EXPLANATION OF PROVISION

The provision amends Section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) to provide that gasoline or diesel fuel sold at duty-free enterprises shall be considered to entered for consumption into the United States and thus ineligible for classification as duty-free merchandise.

EFFECTIVE DATE

The provision is effective on the date of enactment.

TITLE III—CONSERVATION AND ENERGY EFFICIENCY PROVISIONS

A. CREDIT FOR CONSTRUCTION OF NEW ENERGY-EFFICIENT HOME

(Sec. 301 of the bill and new sec. 45G of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for the construction of new energy-efficient homes.

REASONS FOR CHANGE

The Committee recognizes that residential energy use for heating and cooling represents a large share of national energy consumption, and accordingly believes that measures to reduce heating and cooling energy requirements have the potential to substantially reduce national energy consumption. The Committee further recognizes that the most cost-effective time to properly insulate a home is when it is under construction and that the most effective mechanism to encourage the utilization of energy-efficient components in the construction of new homes is through an incentive to the builder. Accordingly, the Committee believes that a tax credit for the use of energy-efficiency components in a home's envelope (exterior windows (including skylights) and doors and insulation) or heating and cooling appliances will encourage contractors to produce highly energy-efficient homes, which in turn will reduce national energy consumption. Reduced energy consumption will in turn reduce reliance on foreign suppliers of oil and will reduce pollution in general.

EXPLANATION OF PROVISION

The provision provides a credit to an eligible contractor of an amount equal to the aggregate adjusted bases of all energy-efficient property installed in a qualified new energy-efficient home during construction. The credit cannot exceed $1,000 ($2,000) in the case of a new home that has a projected level of annual heating and cooling costs that is 30 percent (50 percent) less than a comparable dwelling constructed in accordance with Chapter 4 of the 2000 International Energy Conservation Code.

The eligible contractor is the person who constructed the home, or in the case of a manufactured home, the producer of such home. Energy efficiency property is any energy-efficient building envelope component (insulation materials or system designed to reduce heat loss or gain, and exterior windows, including skylights, and doors) and any energy-efficient heating or cooling appliance that can, individually or in combination with other components, meet the standards for the home.

To qualify as an energy-efficient new home, the home must be: (1) a dwelling located in the United States; (2) the principal residence of the person who acquires the dwelling from the eligible contractor, and (3) certified to have a projected level of annual heating and cooling energy consumption that meets the standards for either the 30–percent or 50–percent reduction in energy usage. The home may be certified according to a component-based method or an energy performance based method. Additionally, manufactured homes certified by the Environmental Protection Agency's Energy Star Labeled Homes program are eligible for the $1,000 credit provided criteria (1) and (2) are met.

The component-based method of certification shall be based on applicable energy-efficiency specifications or ratings, including current product labeling requirements. The Secretary shall develop component-based packages that are equivalent in energy performance to properties that qualify for the credit. The standard for certifying homes through the component based method shall be based on the same standards for plan check and physical inspections as are used for energy code compliance. The certification shall be provided by a local building regulatory authority, a utility, a manufactured home primary inspection agency, or a home energy rating organization. Such provider of the certification must be financially independent of the eligible contractor.

The performance-based method of certification shall be based on an evaluation of the home in reference to a home which uses the same energy source and system heating type, and is constructed in accordance with the Chapter 4 of the 2000 International Energy Conservation Code. The certification shall be provided by an individual recognized by the Secretary for such purposes.

The certification process requires that energy savings to the consumer be measured in terms of energy costs. To ensure consistent and reasonable energy cost analyses, the Department of Energy shall include in its rulemaking related to this bill specific reference data to be used for qualification for the credit.

In the case of manufactured homes, certification shall be by the Energy Star Labeled Homes program.

The credit will be part of the general business credit. No credits attributable to energy efficient homes may be carried back to any taxable year ending on or before the effective date of the credit.

EFFECTIVE DATE

The credit applies to homes whose construction is substantially completed after the date of enactment and which are purchased during the period beginning on the date of enactment and ending on December 31, 2007 (December 31, 2005 in the case of the $1,000 credit).

B. CREDIT FOR ENERGY-EFFICIENT APPLIANCES

(Sec. 302 of the bill and new sec. 45H of the Code)

PRESENT LAW

A nonrefundable, 10–percent business energy credit is allowed for the cost of new property that is equipment: (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat; or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of: (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for the manufacture of energy-efficient appliances.

REASONS FOR CHANGE

The Committee believes that providing a tax credit for the production of energy-efficient clothes washers and refrigerators will encourage manufacturers to produce such products currently and to invest in technologies to achieve higher energy-efficiency standards for the future. In addition, the Committee intends to encourage those manufacturers already producing energy-efficient clothes washers and refrigerators to accelerate production.

EXPLANATION OF PROVISION

The provision provides a credit for the production of certain energy-efficient clothes washers and refrigerators. The credit would equal $50 per appliance for energy-efficient clothes washers produced with a modified energy factor (''MEF'') of 1.42 MEF or greater for washers produced before 2007 and for refrigerators produced before 2005 that consume 10 percent less kilowatt-hours per year than the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. The credit equals $100 for energy-efficient clothes washers produced with a MEF of 1.5 or greater and for refrigerators produced that consume at least 15 percent less kilowatt-hours per year (at least 20 percent less for production in 2007) than the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. The credit is $150 in the case of a refrigerator that consumes at least 20 percent less kilowatt-hours per year than such standards and is produced before 2007. A refrigerator must be an automatic defrost refrigerator-freezer with an internal volume of at least 16.5 cubic feet to qualify for the credit. A clothes washer is any residential clothes washer, including a residential style coin operated washer, that satisfies the relevant efficiency standard.

For each category of appliances (e.g., washers that meet the lower MEF standard, washers that meet the higher MEF standard, refrigerators that meet the 10 percent standard, refrigerators that meet the 15 percent standard), only production in excess of average production for each such category during calendar years 2000–2002 would be eligible for the credit. For 2003, only production after the date of enactment is eligible for the credit, and special rules apply to determine if production exceeds the average of the base period. The taxpayer may not claim credits in excess of $60 million for all taxable years,

and may not claim credits in excess of $30 million with respect to appliances that only qualify for the $50 credit. Additionally, the credit allowed for all appliances may not exceed two percent of the average annual gross receipts of the taxpayer for the three taxable years preceding the taxable year in which the credit is determined.

The credit will be part of the general business credit. No credits attributable to energy-efficient appliances may be carried back to taxable years ending before January 1, 2003.

EFFECTIVE DATE

The credit applies to appliances produced after the date of enactment and prior to January 1, 2008.

C. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY

(Sec. 303 of the bill and new sec. 25C of the Code)

PRESENT LAW

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law personal tax credit for energy efficient residential property.

REASONS FOR CHANCE

The Committee believes that allowing a credit for the purchase of certain energy efficient appliances and systems that generate electricity through renewable and pollution=free alternative energy sources will encourage the purchase of these products. The Committee believes that the use of these products will help reduce reliance on conventional energy sources and reduce atmospheric pollutants. The Committee believes that the on-site generation of electricity and solar hot water will reduce reliance on the United States' electricity grid and on natural gas pipelines. Furthermore, the Committee believes that the use of highly efficient residential equipment will lead to decreased energy consumption in households, resulting in significant energy savings.

EXPLANATION OF PROVISION

The provision provides a personal tax credit for the purchase of qualified wind energy property, qualified photovoltaic property, and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 15 percent for solar water heating property and photovoltaic property, and 30 percent for wind energy property. The maximum credit for each of these systems of property is $2,000. The provision also provides a 30 percent credit for the purchase of qualified fuel cell power plants. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatt of capacity.

Qualifying solar water heating property means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun. Qualified photovoltaic property is property that uses solar energy to generate electricity for use in a dwelling unit. Solar panels are treated as qualified photovoltaic property. Qualified wind energy property is property that uses wind energy to generate electricity for use in a dwelling unit. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent and that generates at least 0.5 kilowatts of electricity. The qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence.

The provision also provides a credit for the purchase of other qualified energy efficient property, as described below:

Electric heat pump hot water heaters with an Energy Factor of at least 1.7. The maximum credit is $75 per unit.

Electric heat pumps with a heating efficiency of at least 9 HSPF (Heating Seasonal Performance Factor) and a cooling efficiency of at least 15 SEER (Seasonal Energy Efficiency Rating) and an energy efficiency ratio (EER) of 12.5 or greater. The maximum credit is $250 per unit.

Natural gas, oil, or propane furnace which achieves 95 percent annual fuel utilization efficiency. The maximum credit is $250 per unit.

Central air conditioners with an efficiency of at least 15 SEER and an EER of 12.5 or greater. The maximum credit is $250 per unit.

Natural gas, oil, or propane water heaters with an Energy Factor of at least 0.8. The maximum credit is $75 per unit.

Geothermal heat pumps which have an EER of at least 21. The maximum credit is $250 per unit.

The credit is nonrefundable, and the depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit are eligible expenditures. The credit is allowed against the regular and alternative minimum tax.

Certain equipment safety requirements need to be met to qualify for the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations. With the exception of wind energy property, if less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account.

EFFECTIVE DATE

The credit applies to purchases after the date of enactment and before January 1, 2008.

D. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS AND STATIONARY MICROTURBINE POWER PLANTS

(Sec. 304 of the bill and sec. 48 of the Code)

PRESENT LAW

A nonrefundable, 10–percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. An unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for fuel cell power plant or microturbine property.

REASONS FOR CHANGE

The Committee believes that investments in qualified fuel cell power plants represent a promising means to produce electricity through non-polluting means and from non-conventional energy sources. Furthermore, the on-site generation of electricity provided by fuel cell power plants, as well as that by microturbines, will reduce reliance on the United States' electricity grid. The Committee believes that providing a tax credit for investment in qualified fuel cell and microturbine power plants will encourage investments in such systems.

EXPLANATION OF PROVISION

The provision provides a 30 percent business energy credit for the purchase of qualified fuel cell power plants for businesses. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent and generates at least 0.5 kilowatts of electricity using an electrochemical process. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatts of capacity.

Additionally, the provision provides a 10 percent credit for the purchase of qualifying stationary microturbine power plants. A qualified stationary microturbine power plant is an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such system also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency and power factors. Such system must have an electricity-only generation efficiency of not less that 26 percent at International Standard Organization conditions and a capacity of less than 2,000 kilowatts. The credit is limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

The credit is nonrefundable. The taxpayer's basis in the property is reduced by the amount of the credit claimed.

EFFECTIVE DATE

The credit for businesses applies to property placed in service after the date of enactment and before January 1, 2008 (January 1, 2007 in the case of microturbines), under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

E. ENERGY-EFFICIENT COMMERCIAL BUILDINGS DEDUCTION

(Sec. 305 of the bill and new sec. 179B of the Code)

PRESENT LAW

No special deduction is currently provided for expenses incurred for energy-efficient commercial building property.

REASONS FOR CHANGE

The Committee recognizes that commercial buildings consume a significant amount of energy resources and that reductions in commercial energy use have the potential to significantly reduce national energy consumption. Accordingly, the Committee believes that a special deduction for commercial building property (lighting, heating, cooling, ventilation, and hot water supply systems) that meets a high energy-efficiency standard will encourage construction of buildings that are significantly more energy efficient than the norm. The Committee further believes that the special deduction will encourage innovation to reduce the costs of meeting the energy-efficiency standard.

EXPLANATION OF PROVISION

The provision provides a deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property expenditures are defined as amounts paid or incurred for energy-efficient property installed in connection with the new construction or reconstruction of property: (1) which is depreciable property; (2) which is located in the United States, and (3) which is the type of structure to which the Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (''ASHRAE/IESNA'') is applicable. The deduction is limited to an amount equal to $2.25 per square foot of the property for which such expenditures are made. The deduction is allowed in the year in which the property is placed in service.

Energy-efficient commercial building property generally means any property that reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a building which minimally meets the requirements of Standard 90.1–2001 of ASHRAE/IESNA. Because of the requirement that in order to qualify, a building must fall within the scope of the ASHRAE/IESNA Standard 90.1–2001, residential rental property that is less than four stories does not qualify.

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Secretary of Energy, will promulgate regulations that describe methods of calculating and verifying energy and power costs. The methods for calculation shall be fuel neutral, such that the same energy efficiency features shall qualify a building for the deduction under this subsection regardless of whether the heating source is a gas or oil furnace or an electric heat pump. To allow proper calculations of cost, the Secretary shall prescribe the costs per unit of energy and power, such as kilowatt hour, kilowatt, gallon of fuel oil, and cubic foot or Btu of natural gas, which may be dependent on time of usage. If a State has developed annual energy usage and cost reduction procedures based on time of usage costs for use in the performance standards of the State's building energy code before the effective date of this section, the Secretary may allow taxpayers in that State to use those annual energy usage and cost reduction procedures in lieu of those adopted by the Secretary.

The Secretary shall promulgate procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Home Energy Rating Standards. Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes. In order that the deduction is available immediately, it is expected that the Secretary will promptly issue interim guidance with respect to the methods of calculating and verifying energy and power costs that relies on provisions of ASHRAE/IESNA Standard 90.1–2001 and of the 2001 California Nonresidential Alternative Calculation Method Approval Manual or the 2001 California Residential Alternative Calculation Method Approval Manual. The methods for calculation need not comply fully with section 11 of ASHRAE/IESNA Standard 90.1–2001. Such interim guidance will include interim guidance as to the qualified computer software and qualified individuals necessary to certify eligibility for the deduction.

When final regulations are adopted, such regulations additionally may, with respect to methods of calculating and verifying energy and power costs, take into consideration appropriate energy savings from design methodologies and technologies not otherwise credited in ASHRAE/IESNA Standard 90.1–2001, the 2001 California Nonresidential Alternative Calculation Method Approval Manual, or the 2001 California Residential Alternative Calculation Method Approval Manual, including the following: (1) natural ventilation, (2) evaporative cooling, (3) automatic lighting controls such as occupancy sensors, photocells, and timeclocks, (4) daylighting, (5) designs utilizing semi-conditioned spaces which maintain adequate comfort conditions without air conditioning or without heating, (6) improved fan system efficiency, including reductions in static pressure, and (7) advanced unloading mechanisms for mechanical cooling, such as multiple or variable speed compressors. Additionally, the calculation methods may take into account the extent of commissioning in the building, and allow the taxpayer to take into account measured performance which exceeds typical performance.

For energy-efficient commercial building property public property expenditures made by a public entity, such as public schools, the interim guidance, as well as final regulations, will allow the value of the deduction (determined without regard to the tax-exempt status of such entity) to be allocated to the person primarily responsible for designing the property in lieu of the public entity.

EFFECTIVE DATE

The provision is effective for taxable years beginning after the date of enactment for expenditures in connection with a building whose construction is completed on or before December 31, 2009.

F. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES

(Sec. 306 of the bill and sec. 168 of the Code)

PRESENT LAW

No special recovery period is currently provided for depreciation of qualified energy management devices.

REASONS FOR CHANGE

The Committee believes that consumers could better manage their electricity use if they had better information concerning their usage habits by time of day. In the case of electricity, if time-of-day pricing is used, energy management devices that provide information to consumers regarding their peak electrical use could encourage consumers to defer certain electrical use, such as use of a washing machine, to periods of the day when electricity prices are lower. In addition to potentially reducing consumers' electricity bill, spreading the demand for electricity more evenly throughout the day will reduce the need for utility investments in generation capacity to satisfy peak demand periods.

The Committee believes that providing a 3–year recovery period for qualified energy management devices will provide sufficient incentive for utilities to establish time-of-day pricing options that will encourage consumers to adjust their electricity usage in such a manner to dampen utilities' peak load capacity needs and thus reduce the need for investment in new capacity to meet peak load demand.

EXPLANATION OF PROVISION

The provision provides a three-year recovery period for qualified new energy management devices placed in service by any taxpayer who is a supplier of electric energy or is a provider of electric energy services. A qualified energy management device is any meter or metering device eligible for accelerated depreciation under code section 168 and which is used by the taxpayer

(1) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and

(2) to provide such data on at least a monthly basis to both consumers and the taxpayer.

EFFECTIVE DATE

The provision is effective for any qualified energy management device placed in service after the date of enactment of the Act and before January 1, 2008.

G. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED WATER SUBMETERING DEVICES

(Sec. 307 of the bill and sec. 168 of the Code)

PRESENT LAW

No special recovery period is currently provided for depreciation of qualified water submetering devices.

REASONS FOR CHANGE

The Committee believes that consumers would better manage their water use if they paid for water in proportion to the water that they actually used. In many cases in multi-unit properties, there is not unit by unit metering of water use. Rather, the landlord's average per-unit costs for water are reflected in rental rates. Thus, individual units have virtually no financial incentive to conserve on water use, as the cost of any individual's increased water usage is borne by all dwellers. The Committee believes that a tax incentive for the installation of submeters to enable unit by unit charges that reflect water usage will rationalize water use and help to conserve water resources.

EXPLANATION OF PROVISION

The provision provides a three-year recovery period for qualified new water submetering devices placed in service by any taxpayer who is an eligible resupplier. An eligible resupplier is any taxpayer who purchases and installs qualified water submetering devices in every unit in any multi-unit property. A qualified water submetering device is anywater submetering device eligible for accelerated depreciation under code section 168 and which is used by the taxpayer

(1) to measure and record water usage data, and

(2) to provide such data on at least a monthly basis to both consumers and the taxpayer.

EFFECTIVE DATE

The provision is effective for any qualified water submetering device placed in service after the date of enactment of the Act and before January 1, 2008.

H. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY

(Sec. 308 of the bill and Sec. 48 of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new

property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for combined heat and power (''CHP'') property.

REASONS FOR CHANGE

The Committee believes that investments in combined heat and power systems represent a promising means to achieve greater national energy efficiency by encouraging the dual use of the energy from the burning of fossil fuels. Furthermore, the on-site generation of electricity provided by CHP systems will reduce reliance on the United States' electricity grid. The Committee believes that providing a tax credit for investment in combined heat and power property will encourage investments in such systems.

EXPLANATION OF PROVISION

The provision provides a 10-percent credit for the purchase of combined heat and power property. CHP property as defined as property: (1) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications); (2) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) which produces at least 20 percent of its total useful energy in the form of thermal energy and at least 20 percent in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical capacities.) Also, for purposes of determining whether CHP property includes technologies which generate electricity or mechanical power using backpressure steam turbines in place of existing pressure-reducing valves, or which make use of waste heat from industrial processes such as by using organic rankine, stirling, or kalina heat engine systems, the general requirements of clause (1), the energy output requirements related to heat versus power described under (3), and the energy efficiency requirements of (4), above, may be disregarded.

CHP property does include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

If a taxpayer is allowed a credit for CHP property, and the property would ordinarily have a depreciation class life of 15 years or less, the depreciation period for the property is treated as having a 22-year class life. The present-law carry back rules of the general business credit generally would apply except that no credits attributable to combined heat and power property may be carried back before the effective date of this provision.

EFFECTIVE DATE

The credit applies to property placed in service after the date of enactment and before January 1, 2007.

I. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES

(Sec. 309 of the bill and new sec. 25D of the Code)

PRESENT LAW

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present law credit for energy efficiency improvements to existing homes.

REASONS FOR CHANGE

Since residential energy consumption represents a large fraction of national energy use, the Committee believes that energy savings in this sector of the economy have the potential to significantly impact national energy consumption, which will reduce reliance on foreign suppliers of oil and reduce pollution in general. The Committee further recognizes that many existing homes are inadequately insulated. Accordingly, the Committee believes that a tax credit for certain energy-efficiency improvements related to a home's envelope (exterior windows (including skylights) and doors, insulation, and certain roofing systems) will encourage homeowners to improve the insulation of their homes, which in turn will reduce national energy consumption.

EXPLANATION OF PROVISION

The provision would provide a 10-percent nonrefundable credit for the purchase of qualified energy efficiency improvements. The maximum credit for a taxpayer with respect to the same dwelling for all taxable years is $300. A qualified energy efficiency improvement would be any energy efficiency building envelope component that is certified to meet or exceed the prescriptive criteria for such a component established by the 2000 International Energy Conservation Code, or any combination of energy efficiency measures that is certified to achieve at least a 30-percent reduction in heating and cooling energy usage for the dwelling and (1) that is installed in or on a dwelling located in the United States; (2) owned and used by the taxpayer as the taxpayer's principal residence; (3) the original use of which commences with the taxpayer; and (4) such component can reasonably be expected to remain in use for at least five years.

Building envelope components would be: (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling, and (2) exterior windows (including skylights) and doors.

Homes shall be certified according to a component-based method or a performance-based method. The component-based method shall be based on applicable energy-efficiency ratings, including current product labeling requirements. Certification by the component method shall be provided by a third party, such as a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency, or a home energy rating organization.

The performance-based method shall be based on a comparison of the projected energy consumption of the dwelling in its original condition and after the completion of energy efficiency measures. The performance-based method of certification shall be conducted by an individual or organization recognized by the Secretary of the Treasury for such purposes.

The certification process requires that energy savings to the consumer be measured in terms of energy costs. To ensure consistent and reasonable energy cost analyses, the Department of Energy shall include in its rulemaking related to this bill specific reference data to be used for qualification for the credit.

The taxpayer's basis in the property would be reduced by the amount of the credit. Special rules would apply in the case of condominiums and tenant-stockholders in cooperative housing corporations.

The credit is allowed against the regular and alternative minimum tax.

EFFECTIVE DATE

The credit is effective for qualified energy efficiency improvements installed on or after the date of enactment and before January 1, 2007.

TITLE IV—CLEAN COAL INCENTIVES

A. INVESTMENT AND PRODUCTION CREDITS FOR CLEAN COAL TECHNOLOGY

(Secs. 401, 411, and 412 of the bill and new secs. 451, 45J, and 48A of the Code)

PRESENT LAW

Present law does not provide an investment credit for electricity generating units that use coal as a fuel. Nor does present law provide a production credit for electricity generated at units that use coal as a fuel. However, a nonrefundable, 10–percent investment tax credit (''business energy credit'') is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) that is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage (sec. 48). Also, an income tax credit is allowed for the production of electricity from either qualified wind energy, qualified ''closed-loop'' biomass, or qualified poultry waste units placed in service prior to January 1, 2004 (sec. 45). The credit allowed equals 1.5 cents per kilowatt-hour of electricity sold. The 1.5 cent figure is indexed for inflation and equaled 1.8 cents for 2002. The credit is allowable for production during the 10–year period after a unit is originally placed in service. The business energy tax credits and the production tax credit are components of the general business credit (sec. 38(b)(1)).

REASONS FOR CHANGE

The Committee recognizes that coal is the nation's most abundant fuel source. The Committee is also sensitive to the environmental impact of burning coal for the production of electricity. For coal to continue to be a viable fuel source, the Committee seeks to encourage ways to burn coal in a more efficient and environmentally friendly manner. Therefore, the Committee supports the development and deployment of the most advanced technologies for generating electricity from coal by providing investment

and production credits to a limited number of experimental production-scale electricity generating units to reduce the cost of building and operating units that represent the frontier of thermal efficiency and pollution control.

Tax-exempt organizations make up a significant percentage of the electricity industry in the United States. The Committee believes it is important to provide the incentives for investment in, and production from, clean coal technologies to all producers.

EXPLANATION OF PROVISION

In general

The bill creates three new credits: a production credit for electricity produced from qualifying clean coal technology units; a production credit for electricity produced from qualifying advanced clean coal technology units; and a credit for investments in qualifying advanced clean coal technology units. Certain persons (public utilities, electric cooperatives, Indian tribes, and the Tennessee Valley Authority) will be eligible to obtain certifications from the Secretary of the Treasury (as described below) for each of these credits and sell, trade, or assign the credit to any taxpayer. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent transfers are not permitted.

Credit for investments in qualifying advanced clean coal technology units

The bill provides a 10-percent investment tax credit for qualified investments in advanced clean coal technology units. A qualified investment is that amount that would otherwise be a qualified investment multiplied by a fraction equal to the amount of national megawatt capacity allocated to the taxpayer (as described below) divided by the megawatt capacity of the qualifying unit. Qualifying advanced clean coal technology units must utilize advanced pulverized coal or atmospheric fluidized bed combustion technology, pressurized fluidized bed combustion technology, integrated gasification combined cycle technology, or some other technology certified by the Secretary of Energy. Any qualifying advanced clean coal technology unit must meet certain capacity standards, thermal efficiency standards, and emissions standards for SO_2, nitrous oxides, particulate emissions, and source emissions standards as provided in the Clean Air Act. In addition, a qualifying advanced clean coal technology unit must meet certain carbon emissions requirements.

The proposal defines four types of qualifying advanced clean coal technology units: (1) advanced pulverized coal or atmospheric fluidized bed combustion technology units (2) qualifying pressurized fluidized bed combustion technology units; (3) integrated gasification combined cycle technology units; and (3) other technology units.

(1) A qualifying advanced pulverized coal or atmospheric fluidized bed combustion technology unit is a unit placed in service after the date of enactment and before 2013 and having a design net heat rate of not more than 8,500 Btu (8,900 Btu if the unit is placed in service before 2009).

(2) A qualifying pressurized fluidized bed combustion technology unit is a unit placed in service after the date of enactment and before 2017 and having a design net heat rate of not more than 7,720 Btu (8,900 Btu if the unit is placed in service before 2009 and 8,500 Btu if the unit is placed in service after 2008 and before 2013).

(3) A qualifying integrated gasification combined cycle technology unit is a unit placed in service after the date of enactment and before 2017 and having a design net heat rate of not more than 7,720 Btu (8,900 Btu if the unit is placed in service before 2009 and 8,500 Btu if the unit is placed in service after 2008 and before 2013).

(4) A qualifying other technology unit use any other technology and is placed in service after the date of enactment and before 2017.

The provision provides that qualifying advanced clean coal units must satisfy carbon emissions standards. For units using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate must be less than 0.60 pound of carbon per kilowatt hour (0.51 if the unit qualifies as an other technology unit). For units using design coal with a heat content in excess of 9,000 Btu per pound, the carbon emission rate must be less than 0.54 pound of carbon per kilowatt hour (0.459 if the unit qualifies as an other technology unit).

To be a qualified investment in advanced clean coal technology, the taxpayer must receive a certificate from the Secretary of the Treasury. The Secretary may grant certificates to investments only to the point that 4,000 megawatts of electricity production capacity qualifies for the credit. From the potential pool of 4,000 megawatts of capacity, not more than 1,000 megawatts in total and not more than 500 megawatts in years prior to 2009 shall be allocated to units using advanced pulverized coal or atmospheric fluidized bed combustion technology. From the potential pool of 4,000 megawatts of capacity, not more than 500 megawatts in total and not more than 250 megawatts in years prior to 2009 shall be allocated to units using pressurized fluidized bed combustion technology. From the potential pool of 4,000 megawatts of capacity, not more than 2,000 megawatts in total and not more than 750 megawatts in years prior to 2009 shall be allocated to units using integrated gasification combined cycle technology, with or without fuel or chemical co-production. From the potential pool of 4,000 megawatts of capacity, not more than 500 in total and not more than 250 megawatts in years prior to 2009 shall be allocated to any other technology certified by the Secretary of Energy.

Production credit for electricity produced from qualifying clean coal technology units

The bill provides a production credit for electricity produced from certain units that have been retrofitted, repowered, or replaced with a clean coal technology within ten years of the date of enactment. The value of the credit is 0.34 cents per kilowatt-hour of electricity and the heat value of other fuels or chemicals produced at the unit multiplied by the fraction equal to the amount of national megawatt capacity limitation (see below) allocated to the qualifying unit divided by the total megawatt capacity of the unit. The value of the credit is indexed for inflation occurring after 2003 with the first potential adjustment in 2005. The taxpayer may claim the credit throughout the 10-year period commencing from the date on which the qualifying unit is placed in service.

A qualifying clean coal technology unit is a clean coal technology unit that meets certain capacity standards, thermal efficiency standards, and emissions standards for SO_2, nitrous oxides, particulate emissions, and source emissions standards as provided in the Clean Air Act. In addition, a qualifying clean coal technology unit cannot be a unit that is receiving or is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of the Department of Energy. Lastly, to be a qualified clean coal technology unit, the taxpayer must receive a certificate from the Secretary of the Treasury. The Secretary may grant certificates to units only to the point that 4,000 megawatts of electricity production capacity qualifies for the credit. However, no qualifying unit would be eligible if the unit's capacity exceeded 300 megawatts prior to having been retrofitted, repowered, or replaced. The maximum eligible allocation to any qualifying unit may not exceed 300 megawatts.

Production credit for electricity produced from qualifying advanced clean coal technology

The bill also provides a production credit for electricity produced from any qualified advanced clean coal technology electricity generation unit that qualifies for the investment credit for qualifying clean coal technology units, as described above. The taxpayer may claim a production credit on the sum of each kilowatt-hour of electricity produced and the heat value of other fuels or chemicals produced by the taxpayer at the unit. The taxpayer may claim the production credit for the 10-year period commencing with the date the qualifying unit is placed in service (or the date on which a conventional unit was retrofitted or repowered). The value of the credit varies depending upon the year the unit is placed in service, whether the unit produces solely electricity or electricity and fuels or chemicals, and the rated thermal efficiency of the unit. In addition, the value of the credit is reduced for the second five years of eligible production. If a unit meets the more stringent qualification standards of post-2008 in years before 2009, the taxpayer may claim the higher post-2008 credit amounts. The value of the credit is indexed for inflation occurring after 2003 with the first potential adjustment in 2005. The tables below specify the value of the credit (before indexing is applied).

Advanced clean coal technology units producing solely electricity

TABLE 11.—UNITS PLACED IN SERVICE BEFORE 2009

The unit net heat rate, Btu/kWh adjusted for the heat content for the design coal is equal to:	Credit amount per kilowatt-hour	
	For the first five years	For the second five years
Not more than 8,500	$.0060	$.0038
More than 8,500 but not more than 8,750	$.0025	$.0010
More than 8,750 but less than 8,900	$.0010	$.0010

TABLE 12.—UNITS PLACED IN SERVICE AFTER 2008 AND BEFORE 2013

The unit net heat rate, Btu/kWh adjusted for the heat content for the design coal is equal to:	Credit amount per kilowatt-hour	
	For the first five years	For the second five years
Not more than 7,770	$.0105	$.0090
More than 7,770 but not more than 8,125	$.0085	$.0068
More than 8,125 but less than 8,500	$.0075	$.0055

TABLE 13.—UNITS PLACED IN SERVICE AFTER 2012 AND BEFORE 2017

The unit net heat rate, Btu/kWh adjusted for the heat content for the design coal is equal to:	Credit amount per kilowatt-hour	
	For the first five years	For the second five years to:
Not more than 7,380	$.0140	$.0115
More than 7,380 but not more than 7,720	$.0120	$.0090

Advanced clean coal technology units producing electricity and a fuel or chemical

TABLE 14.—UNITS PLACED IN SERVICE BEFORE 2009

The unit design net thermal efficiency is equal to:	Credit amount per kilowatt-hour	
	For the first five years	For the second five years
Not less than 40.6%	$.0060	$.0038
Less than 40.6% but not less than 40%	$.0025	$.0010
Less than 40% but not less than 38.4%	$.0010	$.0010

TABLE 15.—UNITS PLACED IN SERVICE AFTER 2008 AND BEFORE 2013

The unit design net thermal efficiency is equal to:	Credit amount per kilowatt-hour	
	For the first five years	For the second five years
Not less than 43.6%	$.0105	$.0090
Less than 43.6% but not less than 42%	$.0085	$.0068
Less than 42% but not less than 40.2%	$.0075	$.0055

TABLE 16.—UNITS PLACED IN SERVICE AFTER 2012 AND BEFORE 2017

The unit design net thermal efficiency is equal to:	Credit amount per kilowatt-hour	
	For the first five years	For the second five years
Not less than 44.2%	$.0140	$.0115
Less than 44.2% but not less than 43.9%	$.0120	$.0090

The credits are part of the general business credit. No credit may be carried back to taxable years ending on or before the date of enactment.

EFFECTIVE DATE

The provision relating to investment credits for advanced clean coal technology units is effective after the date of enactment. The provisions relating to production credits are effective after the date of enactment.

TITLE V—OIL AND GAS PROVISIONS

A. Tax Credit for Oil and Gas Production from Marginal Wells

(Sec. 501 of the bill and sec. 45K of the Code)

PRESENT LAW

There is no credit for the production of oil and gas from marginal wells. The costs of such production may be recovered under the Code's depreciation and depletion rules and in other cases as a deduction for ordinary and necessary business expenses.

REASONS FOR CHANGE

The highly volatile price of oil and gas can result in lost production during periods when prices are low. The Committee has learned that once a marginally producing well is shut down, that source of supply may be forever lost. To increase domestic supply, the Committee determined that a tax credit will help ensure that supply is not lost as a result of low market prices.

EXPLANATION OF PROVISION

The provision would create a new, $3 per barrel credit for qualified crude oil production and a $0.50 credit per 1,000 cubic feet of qualified natural gas production. The maximum amount of production on which credit could be claimed is 1,095 barrels or barrel equivalents. In both cases, the credit is available only for qualified production from a ''qualified marginal well.'' The credit is not available to production occurring if the reference price of oil exceeded $18 ($2.00 for natural gas). The credit is reduced proportionately as for reference prices between $15 and $18 ($1.67 and $2.00 for natural gas). Reference prices are determined on a one-year lookback basis.

The terms ''qualified crude oil production'' and ''qualified natural gas production'' mean domestic crude oil or natural gas which is produced from a qualified marginal well. Production from a marginal well that is not in compliance with the applicable Federal pollution prevention, control and permit requirements for any period of time is not considered qualified crude oil production or qualified natural gas production. A qualified marginal well is defined as (1) a well production from which was marginal production for purposes of the Code percentage depletion rules or (2) a well that during the taxable year had (a) average daily production of not more than 25 barrel equivalents and (b) produced water at a rate of not less than 95 percent of total well effluent.

The credit is treated as part of the general business credit. The credit cannot be carried back to a taxable year ending on or before the date of enactment of the provision.

EFFECTIVE DATE

The provision is effective for production in taxable years beginning after the date of enactment.

B. Natural Gas Gathering Lines Treated as Seven-Year Property

(Sec. 502 of the bill and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the ''class life of the property.'' The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56. Revenue Procedure 87–56 includes two asset classes that could describe natural gas gathering lines owned by nonproducers of natural gas. Asset class 46.0, describing pipeline transportation, provides a class life of 22 years and a recovery period of 15 years. Asset class 13.2, describing assets used in the exploration for and production of petroleum and natural gas deposits, provides a class life of 14 years and a depreciation recovery period of seven years. The uncertainty regarding the appropriate recovery period of natural gas gathering lines has resulted in litigation between taxpayers and the IRS. The 10th Circuit Court of Appeals held that natural gas gathering lines owned by nonproducers falls within the scope of Asset class 13.2 (i.e., seven-year recovery period). More recently, the Tax Court and the U.S. District Court for the Eastern District of Michigan, Southern Division, held that natural gas gathering lines owned by nonproducers falls within the scope of Asset class 46.0 (i.e., 15-year recovery period).

REASONS FOR CHANGE

The Committee believes the appropriate recovery period for natural gas gathering lines is seven years.

EXPLANATION OF PROVISION

The provision establishes a statutory seven-year recovery period and a class life of 10 years for natural gas gathering lines. A natural gas gathering line is defined to include any pipe, equipment, and appurtenance that is (1) determined to be a gathering line by the Federal Energy Regulatory Commission, or (2) used to deliver natural gas from the wellhead or a common point to the point at which such gas first reaches (a) a gas processing plant, (b) an interconnection with an interstate transmission line, (c) an interconnection with an intrastate transmission line, or (d) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment. No inference is intended as to the proper treatment of natural gas gathering lines placed in service before the date of enactment.

C. Expensing of Capital Costs Incurred and Credit for Production in Complying with Environmental Protection Agency Sulfur Regulations

(Secs. 503 and 504 of the bill and new secs. 179C and 45L of the Code)

PRESENT LAW

Taxpayers generally may recover the costs of investments in refinery property through annual depreciation deductions. Present law does not provide a credit for the production of lowsulfur diesel fuel.

REASONS FOR CHANGE

The Committee believes it is important for all refiners to meet applicable pollution control standards. However, the Committee is concerned that the cost of complying with the Highway Diesel Fuel Sulfur Control Requirement of the Environmental Protection Agency may force some small refiners out of business. To maintain this refining capacity and to foster compliance with pollution control standards the Committee believes it is appropriate to modify cost recovery provisions for small refiners to reduce their capital costs of complying with the Highway Diesel Fuel Sulfur Control Requirement of the Environmental Protection Agency.

EXPLANATION OF PROVISION

The provision generally permits small business refiners to claim an immediate deduction (i.e., expensing) for up to 75 percent of the qualified capital costs paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency. Qualified capital costs are those costs paid or incurred and otherwise chargeable to the taxpayer's capital account that are necessary for the refinery to come into compliance with the EPA diesel fuel requirements.

In addition, the provision provides that a small business refiner may claim a credit equal to five cents per gallon for each gallon of low sulfur diesel fuel produced at a facility of a small business refiner. The total production credit claimed by the taxpayer generally is limited to 25 percent of the qualified capital costs incurred with respect to expenditures at the refinery during the period beginning after the date of enactment and ending with the date that is one year after the date on which the taxpayer must comply with applicable EPA regulations. No deduction is allowed to the taxpayer for expenses otherwise allowable as a deduction in an amount equal to the amount of production credit claimed during the taxable year.

For these purposes a small business refiner is a taxpayer who within the business of refining petroleum products employs not more than 1,500 employees directly in refining on business days during a taxable year in which the deduction or production credit is claimed and had an average daily refinery run (or retained production) not exceeding 205,000 barrels per day for the year prior to enactment.

For taxpayers with an average daily refinery run in the year prior to enactment in excess of 155,000 and not greater than 205,000 barrels per day, the provision limits otherwise qualifying small business refiners to an immediate deduction for a percentage of qualifying capital costs equal to 75 percent less the percentage points determined by the excess of the average daily refinery runs over 155,000 barrels per day divided by 50,000 barrels per day. In addition, for these taxpayers, the limitation on the total production credit that may be claimed also is reduced proportionately.

In the case of a qualifying small business refiner that is owned by a cooperative, the

cooperative is allowed to elect to pass any production credits to patrons of the organization.

EFFECTIVE DATE

The provision is effective for expenses paid or incurred after December 31, 2002.

D. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION

(Sec. 505 of the bill and sec. 613A of the Code)

PRESENT LAW

Present law classifies oil and gas producers as independent producers or integrated companies. The Code provides numerous special tax rules for operations by independent producers. One such rule allows independent producers to claim percentage depletion deductions rather than deducting the costs of their asset, a producing well, based on actual production from the well (i.e., cost depletion).

A producer is an independent producer only if its refining and retail operations are relatively small. For example, an independent producer may not have refining operations the runs from which exceed 50,000 barrels on any day in the taxable year during which independent producer status is claimed.

REASONS FOR CHANGE

The Committee believes that the goal of present law, to identify producers without significant refining capacity, can be achieved while permitting more flexibility to refinery operations.

EXPLANATION OF PROVISION

The provision increases the current 50,000-barrel-per-day limitation to 60,000. In addition, the provision changes the refinery limitation on claiming independent producer status from a limit based on actual daily production to a limit based on average daily production for the taxable year. Accordingly, the average daily refinery run for the taxable year cannot exceed 60,000 barrels. For this purpose, the taxpayer calculates average daily refinery run by dividing total production for the taxable year by the total number of days in the taxable year.

EFFECTIVE DATE

The provision is effective for taxable years ending after the date of enactment.

E. EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION

(Sec. 506 of the bill and sec. 613A of the Code)

PRESENT LAW

In General

Depletion, like depreciation, is a form of capital cost recovery. In both cases, the taxpayer is allowed a deduction in recognition of the fact that an asset—in the case of depletion for oil or gas interests, the mineral reserve itself—is being expended in order to produce income. Certain costs incurred prior to drilling an oil or gas property are recovered through the depletion deduction. These include costs of acquiring the lease or other interest in the property and geological and geophysical costs (in advance of actual drilling).

Depletion is available to any person having an economic interest in a producing property. An economic interest is possessed in every case in which the taxpayer has acquired by investment any interest in minerals in place, and secures, by any form of legal relationship, income derived from the extraction of the mineral, to which it must look for a return of its capital. Thus, for example, both working interests and royalty interests in an oil- or gasproducing property constitute economic interests, thereby qualifying the interest holders for depletion deductions with respect to the property. A taxpayer who has no capital investment in the mineral deposit does not possess an economic interest merely because it possesses an economic or pecuniary advantage derived from production through a contractual relation.

Cost depletion

Two methods of depletion are currently allowable under the Internal Revenue Code (the ''Code''): (1) the cost depletion method, and (2) the percentage depletion method (secs. 611–613). Under the cost depletion method, the taxpayer deducts that portion of the adjusted basis of the depletable property which is equal to the ratio of units sold from that property during the taxable year to the number of units remaining as of the end of taxable year plus the number of units sold during the taxable year. Thus, the amount recovered under cost depletion may never exceed the taxpayer's basis in the property.

Percentage depletion and related income limitations

The Code generally limits the percentage depletion method for oil and gas properties to independent producers and royalty owners. Generally, under the percentage depletion method 15 percent of the taxpayer's gross income from an oil- or gas-producing property is allowed as a deduction in each taxable year (sec. 613A(c)). The amount deducted generally may not exceed 100 percent of the net income from that property in any year (the ''net income limitation'') (sec. 613(a)). By contrast, for any other mineral qualifying for the percentage depletion deduction, such deduction may not exceed 50 percent of the taxpayer's taxable income from the depletable property. A similar 50–percent net income limitation applied to oil and gas properties for taxable years beginning before 1991. Section 11522(a) of the Omnibus Budget Reconciliation Act of 1990 prospectively changed the net-income limitation threshold to 100 percent only for oil and gas properties, effective for taxable years beginning after 1990. The 100–percent net-income limitation for marginal wells has been suspended for taxable years beginning after December 31, 1997, and before January 1, 2004.

Additionally, the percentage depletion deduction for all oil and gas properties may not exceed 65 percent of the taxpayer's overall taxable income (determined before such deduction and adjusted for certain loss carrybacks and trust distributions) (sec. 613A(d)(1)) Because percentage depletion, unlike cost depletion, is computed without regard to the taxpayer's basis in the depletable property, cumulative depletion deductions may be greater than the amount expended by the taxpayer to acquire or develop the property.

A taxpayer is required to determine the depletion deduction for each oil or gas property under both the percentage depletion method (if the taxpayer is entitled to use this method) and the cost depletion method. If the cost depletion deduction is larger, the taxpayer must utilize that method for the taxable year in question (sec. 613(a)).

Limitation of oil and gas percentage depletion to independent producers and royalty owners

Generally, only independent producers and royalty owners (as contrasted to integrated oil companies) are allowed to claim percentage depletion. Percentage depletion for eligible taxpayers is allowed only with respect to up to 1,000 barrels of average daily production of domestic crude oil or an equivalent amount of domestic natural gas (sec. 613A(c)). For producers of both oil and natural gas, this limitation applies on a combined basis.

In addition to the independent producer and royalty owner exception, certain sales of natural gas under a fixed contract in effect on February 1, 1975, and certain natural gas from geopressured brine, are eligible for percentage depletion, at rates of 22 percent and 10 percent, respectively. These exceptions apply without regard to the 1,000-barrel-per-day limitation and regardless of whether the producer is an independent producer or an integrated oil company.

REASONS FOR CHANGE

The Committee is concerned that, while current oil and gas operations may be profitable, the highly volatile nature of oil and gas prices could quickly create economic hardships in the industry. Thus, to help minimize the adverse effects of future price fluctuations, the Committee believes it is appropriate to extend the suspension of the 100–percent net-income limitation for marginal wells.

EXPLANATION OF PROVISION

The suspension of the 100–percent net income limitation for marginal wells is extended through taxable years beginning before January 1, 2007.

EFFECTIVE DATE

The provision is effective on date of enactment.

F. AMORTIZATION OF DELAY RENTAL PAYMENTS

(Sec. 507 of the bill and new sec. 199A of the Code)

PRESENT LAW

Present law generally requires costs associated with inventory and property held for resale to be capitalized rather than currently deducted as they are incurred. (sec. 263). Oil and gas producers typically contract for mineral production in exchange for royalty payments. If mineral production is delayed, these contracts provide for ''delay rental payments'' as a condition of their extension. In proposed regulations issued in 2000, the Treasury Department took the position that the uniform capitalization rules of section 263A require delay rental payments to be capitalized.

REASONS FOR CHANGE

The Committee believes that substantial simplification for taxpayers and significant gains in taxpayer compliance and reductions in administrative cost can be contained by establishing the simple rule that all delay rental payments may be amortized over two years, including the basis of abandoned property.

EXPLANATION OF PROVISION

The provision allows delay rental payments incurred in connection with the development of oil or gas within the United States to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

EFFECTIVE DATE

The provision applies to delay rental payments paid or incurred in taxable years beginning after the date of enactment. No inference is intended from the prospective effective date of this proposal as to the proper treatment of pre-effective date delay rental payments.

G. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES

(Sec. 508 of the bill and new sec. 199 of the Code)

PRESENT LAW

In general

Geological and geophysical expenditures are costs incurred by a taxpayer for the purpose of obtaining and accumulating data

that will serve as the basis for the acquisition and retention of mineral properties by taxpayers exploring for minerals. A key issue with respect to the tax treatment of such expenditures is whether or not they are capital in nature. Capital expenditures are not currently deductible as ordinary and necessary business expenses, but are allocated to the cost of the property.

Courts have held that geological and geophysical costs are capital, and therefore are allocable to the cost of the property acquired or retained. The costs attributable to such exploration are allocable to the cost of the property acquired or retained. As described further below, IRS administrative rulings have provided further guidance regarding the definition and proper tax treatment of geological and geophysical costs.

Revenue Ruling 77–188

In Revenue Ruling 77–188 (hereinafter referred to as the ''1977 ruling''), the IRS provided guidance regarding the proper tax treatment of geological and geophysical costs. The ruling describes a typical geological and geophysical exploration program as containing the following elements:

It is customary in the search for mineral producing properties for a taxpayer to conduct an exploration program in one or more identifiable project areas. Each project area encompasses a territory that the taxpayer determines can be explored advantageously in a single integrated operation. This determination is made after analyzing certain variables such as (1) the size and topography of the project area to be explored, (2) the existing information available with respect to the project area and nearby areas, and (3) the quantity of equipment, the number of personnel, and the amount of money available to conduct a reasonable exploration program over the project area.

The taxpayer selects a specific project area from which geological and geophysical data are desired and conducts a reconnaissance-type survey utilizing various geological and geophysical exploration techniques. These techniques are designed to yield data that will afford a basis for identifying specific geological features with sufficient mineral potential to merit further exploration.

Each separable, noncontiguous portion of the original project area in which such a specific geological feature is identified is a separate ''area of interest.'' The original project area is subdivided into as many small projects as there are areas of interest located and identified within the original project area. If the circumstances permit a detailed exploratory survey to be conducted without an initial reconnaissance-type survey, the project area and the area of interest will be coextensive.

The taxpayer seeks to further define the geological features identified by the prior reconnaissance-type surveys by additional, more detailed, exploratory surveys conducted with respect to each area of interest. For this purpose, the taxpayer engages in more intensive geological and geophysical exploration employing methods that are designed to yield sufficiently accurate sub-surface data to afford a basis for a decision to acquire or retain properties within or adjacent to a particular area of interest or to abandon the entire area of interest as unworthy of development by mine or well.

The 1977 ruling provides that if, on the basis of data obtained from the preliminary geological and geophysical exploration operations, only one area of interest is located and identified within the original project area, then the entire expenditure for those exploratory operations is to be allocated to that one area of interest and thus capitalized into the depletable basis of that area of interest. On the other hand, if two or more areas of interest are located and identified within the original project area, the entire expenditure for the exploratory operations is to be allocated equally among the various areas of interest.

If no areas of interest are located and identified by the taxpayer within the original project area, then the 1977 ruling states that the entire amount of the geological and geophysical costs related to the exploration is deductible as a loss under section 165. The loss is claimed in the taxable year in which that particular project area is abandoned as a potential source of mineral production.

A taxpayer may acquire or retain a property within or adjacent to an area of interest, based on data obtained from a detailed survey that does not relate exclusively to any discrete property within a particular area of interest. Generally, under the 1977 ruling, the taxpayer allocates the entire amount of geological and geophysical costs to the acquired or retained property as a capital cost under section 263(a). If more than one property is acquired, it is proper to determine the amount of the geological and geophysical costs allocable to each such property by allocating the entire amount of the costs among the properties on the basis of comparative acreage.

If, however, no property is acquired or retained within or adjacent to that area of interest, the entire amount of the geological and geophysical costs allocable to the area of interest is deductible as a loss under section 165 for the taxable year in which such area of interest is abandoned as a potential source of mineral production.

In 1983, the IRS issued Revenue Ruling 83–105, which elaborates on the positions set forth in the 1977 ruling by setting forth seven factual situations and applying the principles of the 1977 ruling to those situations. In addition, Revenue Ruling 83–105 explains what constitutes ''abandonment as a potential source of mineral production.''

REASONS FOR CHANGE

The Committee believes that substantial simplification for taxpayers, significant gains in taxpayer compliance, and reductions in administrative cost can be obtained by establishing the simple rule that all geological and geophysical costs may be amortized over two years, including the basis of abandoned property.

The Committee recognizes that, on average, a two-year amortization period accelerates recovery of geological and geophysical expenses. The Committee believes that more rapid recovery of such expenses will foster increased exploration for new sources of supply.

EXPLANATION OF PROVISION

The provision allows geological and geophysical costs incurred in connection with oil and gas exploration in the United States to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

EFFECTIVE DATE

The provision is effective for geological and geophysical costs paid or incurred in taxable years beginning after the date of enactment. No inference is intended from the prospective effective date of this proposal as to the proper treatment of pre-effective date geological and geophysical costs.

H. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NON-CONVENTIONAL SOURCE

(Sec. 509 of the bill and new sec. 45J of the Code)

PRESENT LAW

Certain fuels produced from ''non-conventional sources'' and sold to unrelated parties are eligible for an income tax credit equal to $3 (generally adjusted for inflation) per barrel or BTU oil barrel equivalent (sec. 29). Qualified fuels must be produced within the United States.

Qualified fuels include:

(5) oil produced from shale and tar sands; as produced from geopressured brine, Devonian shale, coal seams, tight formations (''tight sands''), or biomass; and

(6) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

In general, the credit is available only with respect to fuels produced from wells drilled or facilities placed in service after December 31, 1979, and before January 1, 1993. An exception extends the January 1, 1993 expiration date for facilities producing gas from biomass and synthetic fuel from coal if the facility producing the fuel is placed in service before July 1, 1998, pursuant to a binding contract entered into before January 1, 1997.

The credit may be claimed for qualified fuels produced and sold before January 1, 2003 (in the case of non-conventional sources subject to the January 1, 1993 expiration date) or January 1, 2008 (in the case of biomass gas and synthetic fuel facilities eligible for the extension period).

REASONS FOR CHANGE

The Committee concludes that the section 29 credit, on the margins, has increased production of oil and natural gas from domestic sources and that in the absence of these non-conventional sources the demand for imported fuels may have increased. To increase domestic sources of supply, the Committee believes it is appropriate to extend the section 29 credit to help foster new domestic fuel sources. The Committee is also concerned that, without the implicit subsidy of the production credit due to the higher extraction costs of certain ''viscous oil,'' entrepreneurs would not otherwise exploit this domestic energy source. Therefore, the Committee believes it is appropriate to extend the credit for viscous oil produced from new wells or facilities.

The Committee also recognizes that the credit for production of synthetic fuels from coal has been interpreted to include fuels that are merely chemical changes to coal that do not necessarily enhance the value or environmental performance of the feedstock coal. Therefore, the Committee believes it is appropriate to extend the section 29 credit only to fuels produced from coal that achieve significant environmental and value-added improvements. Methane in coal mines is a serious safety hazard. In many coal mining operations, the cost of collection exceeds the value of the recovered methane so the methane is vented directly into the atmosphere. Methane is an extremely potent and long-lived greenhouse gas. Therefore, the Committee seeks to encourage capture of methane from coal mines in particular.

The Committee recognizes that the world price of oil as the nation enters the 21st century has not risen to levels forecast in 1978. Therefore, the Committee believes it is appropriate to restart the section 29 credit at a level lower than that currently available to existing production.

The Committee believes it is important to study the efficacy of the section 29 credit in the case of methane recovered from coal seams or so-called ''coal beds.''

EXPLANATION OF PROVISION

The provision extends the placed in service date for certain facilities that would otherwise qualify for the section 29 credit under present law and modifies the amount of the credit to equal $3.00 unindexed for inflation. The provision also expands the class of facilities that are eligible for the credit. In addition, under the provision, the taxpayer

would not be able to claim any credit for production in excess of a daily average of 200,000 cubic feet of gas (or barrel of oil equivalent) from a qualifying well or facility.

Clarification of definition of when a facility is placed in service

The provision clarifies the definition of when a landfill gas facility is placed in service, both for facilities originally placed in service on or before the date of enactment and for facilities placed in service after the date of enactment. In general, a landfill gas facility includes wells, pipes, and the related components to collect landfill gas (i.e., the gas produced from biomass and derived from the bio-degradation on municipal solid waste). The production of landfill gas attributable to wells, pipes, and related components placed in service after the date of enactment is considered produced from a facility placed in service after the date of enactment. Production of landfill gas attributable to those wells, pipes, and related components placed in service on or before the date of enactment is considered produced from a facility placed in service on or before the date of enactment. That is, all of the landfill gas produced from a landfill is not considered to be from a facility placed in service on the date on which the first set of wells, pipes, and related components drew gas from the landfill. Rather, as a landfill expands and additional integrated sets of wells, pipes, and related components are installed to draw off landfill gas, the landfill gas drawn from each additional integrated set of wells, pipes, and related components is to be considered to be produced from a facility placed in service on the date each additional integrated set of wells, pipes, and related components is placed in service. Thus, a single landfill may have several ''facilities'' eligible for the section 29 credit, each placed in service on a different date.

Extension for certain non-conventional fuels

The provision permits taxpayers to claim the section 29 credit for production of certain non-conventional fuels produced at wells placed in service after the date of enactment and before January 1, 2007. Under the provision, qualifying fuels are oil from shale or tar sands, and gas from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass. The value of the credit is re-based to $3.00 and the amount is not indexed for inflation. Taxpayers may claim the credit for production from the well for each of the first three years of production from the qualifying well.

Expansion for fuels from agricultural and animal waste

The provision adds facilities producing liquid, gaseous, or solid fuels, from agricultural and animal waste placed in service after the date of enactment and before January 1, 2007, to the list of qualified facilities for purposes of the non-conventional fuel credit. The amount of the credit is equal to $3.00 (unindexed) per barrel or Btu oil barrel equivalent, for three years of production commencing on the date the facility is placed in service. Agricultural and animal waste includes by-products, packaging, and any materials associated with processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes.

Expansion for ''viscous oil''

The provision expands section 29 to permit taxpayers to claim the section 29 credit for production of certain viscous oil produced at wells placed in service after the date of enactment and before January 1, 2007. The provision defines ''viscous oil'' as domestic crude oil produced from any property if the crude oil has a weighted average gravity of 22 degrees API or less (corrected to 60 degrees Fahrenheit). The value of the credit for viscous oil also is $3.00 per barrel. Taxpayers may claim the credit for production from the well for each of the first three years of production from the time the well is placed in service. The provision provides that qualifying sales to related parties for consumption not in the immediate vicinity of the wellhead qualify for the credit.

Expansion for ''refined coal''

The provision also expands section 29 to include certain ''refined coal'' as a qualified non-conventional fuel. ''Refined coal'' is a qualifying liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) from facilities placed in service after date of enactment and before January 1, 2007. Refined coal also would include a qualifying fuel derived from high carbon fly ash produced from facilities placed in service after the date of enactment and before January 1, 2007. A qualifying fuel is a fuel that when burned emits 20 percent less nitrogen oxide and either sulfur dioxide or mercury than the burning of feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003, and if the fuel sells at prices at least 50 percent greater than the prices of the feedstock coal or comparable coal. However, no fuel produced at a qualifying advanced clean coal facility (as defined elsewhere in the committee bill) would be a qualifying fuel. The amount of credit for refined coal also is $3.00 per barrel equivalent. Taxpayers may claim the credit for fuel produced during the five-year period beginning on the date the facility is placed in service.

Expansion for coalmine gas

In addition, the provision permits taxpayers to claim credit for coalmine gas captured by the taxpayer and utilized as a fuel source or sold by or on behalf of the taxpayer to an unrelated person. The term ''coalmine gas'' means any methane gas which is being liberated during qualified coal mining operations or as a result of past qualified coal mining operations, or which is captured 10 years in advance of qualified coal mining operations as part of specific plan to mine a coal deposit. In the case of coalmine gas that is captured in advance of qualified coal mining operations, the credit is allowed only after the date the coal extraction occurs in the immediate area where the coalmine gas was removed. The value of the credit for coalmine methane also is $3.00 per Btu oil barrel equivalent (51.7 cents per million Btu of heat value in the gas) for gas captured and utilized or sold. Taxpayers may claim the credit for gas captured and utilized or sold after the date of enactment and before January 1, 2007.

Extension of credit for certain existing facilities

The provision extends the present-law credit through December 31, 2005 for production from existing facilities producing coke, coke gas, or natural gas and by-products produced by coal gasification from lignite. The provision provides that the credit amount will be $3.00 per Btu oil barrel equivalent for production from such facilities after December 31, 2002.

Study of coal bed methane gas

Lastly, the provision directs the Secretary of the Treasury to undertake a study of the effect section 29 has had on the production of coal bed methane. The study should estimate the total amount of credit claimed annually and in aggregate related to the production of coal bed methane since the enactment of section 29. The study should report the annual value of the credit allowable for coal bed methane compared to the average annual wellhead price of natural gas (per thousand cubic feet of natural gas). The study should estimate the incremental increase in production of coal bed methane that has resulted from the enactment of section 29. The study should estimate the cost to the Federal government, in terms of the net tax benefits claimed, per thousand cubic feet of incremental coal bed methane produced annually and in aggregate since the enactment of section 29.

EFFECTIVE DATE

The provisions apply to fuels sold from qualifying wells and facilities after the date of enactment.

I. Natural Gas Distribution Lines Treated as 15-Year Property

(Sec. 510 of the bill and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the ''class life of the property.'' The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56. Natural gas distribution pipelines are assigned a 20-year recovery period and a class life of 35 years.

REASONS FOR CHANGE

The Committee recognizes the importance of modernizing our aging energy infrastructure to meet the demands of the twenty-first century, and the Committee also recognizes that both short-term and long-term solutions are required to meet this challenge. The Committee understands that investment in our energy infrastructure has not kept pace with the nation's needs. In light of this, the Committee believes it is appropriate to reduce the recovery period for investment in certain energy infrastructure property to encourage investment in such property.

EXPLANATION OF PROVISION

The provision establishes a statutory 15-year recovery period and a class life of 20 years for natural gas distribution lines.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment.

J. Credit for Alaska Natural Gas

(Sec. 511 of the bill and new sec. 45M of the Code)

PRESENT LAW

Present law does not provide a credit for conventional production of natural gas or delivery of fuels to a pipeline. However, certain fuels produced from ''non-conventional sources'' and sold to unrelated parties are eligible for an income tax credit equal to $3 (generally adjusted for inflation) per barrel or BTU oil barrel equivalent (sec. 29). Qualified fuels must be produced within the United States.

Qualified fuels include:

(1) gas produced from geopressured brine, Devonian shale, coal seams, tight formations (''tight sands''), or biomass; and

(2) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

In general, the credit is available only with respect to fuels produced from wells drilled or facilities placed in service after December 31, 1979, and before January 1, 1993. An exception extends the January 1, 1993 expiration date for facilities producing gas from biomass and synthetic fuel from coal if the facility producing the fuel is placed in service before July 1, 1998, pursuant to a binding contract entered into before January 1, 1997.

The credit may be claimed for qualified fuels produced and sold before January 1, 2003 (in the case of non-conventional sources subject to the January 1, 1993 expiration date) or January 1, 2008 (in the case of biomass gas and synthetic fuel facilities eligible for the extension period).

REASONS FOR CHANGE

The Committee recognizes the natural gas in Alaska is an important natural resource that can expand domestic energy supplies. However, due to the volatility of energy prices, the private sector may be unwilling to make the substantial investment in a pipeline to bring some of the natural gas to the lower 48 States. The Committee believes it is important to make this natural gas resource available to the lower 48 States and to provide an economic stimulus to the Alaskan economy. The Committee believes that a credit against income taxes for delivery of natural gas to a transmission pipeline will provide a minimum return and the reduced volatility necessary to induce the private sector to invest in the pipeline to bring Alaska natural gas to the rest of the U.S. market.

EXPLANATION OF PROVISION

The provision provides a credit per million British thermal units (Btu) of natural gas for Alaska natural gas entering a pipelines during the 15–year period beginning the later of January 1, 2010 or the initial date for the interstate transportation of Alaska natural gas. Taxpayers may claim the credit against both the regular and minimum tax.

The credit amount for any month is a maximum of 52 cents per million Btu of natural gas. The credit phases out as the reference price of Alaska natural gas rises above 83 cents per million Btu, at a rate of one cent of credit lost per each cent by which the reference price of Alaska natural gas exceeds 83 cents per million Btu. The credit is not available if the reference price of Alaska natural gas rises above $1.35 per million Btu. The 52–cent and 83–cent figures are indexed for inflation after 2002, with the first adjustment for calendar year 2004.

The bill provides that the Secretary of Treasury calculate the reference price of Alaska natural gas as the average price of natural gas delivered in the lower 48 States less certain transportation costs and gas processing costs. The Committee intends that an appropriate measure of the price of natural gas delivered to the lower 48 States be the monthly Chicago city gate price for natural gas as reliably reported in one or more trade publications or as reported by the Secretary of Energy. Because qualifying natural gas is likely to be transported across both the United States and Canada, the Committee intends that transportation costs be measured as such costs as determined (pursuant to approved tariffs) by the appropriate national regulatory body. At the present time, the appropriate national regulatory body for transportation of natural gas in the United States is the Federal Energy Regulatory Commission. At the present time, the Committee understands the appropriate national regulatory body for transportation of natural gas in Canada is the Canadian National Energy Board. The Committee further intends that gas processing costs include all rates and charges of whatever kind for firm service assessed with respect to the processing of Alaska natural gas as calculated pursuant to approved tariffs under the Natural Gas Act (15 U.S.C. 717), if such costs are regulated by the Federal government, or as calculated under the principles of sec. 482 of the Code, if such costs are not regulated by the Federal government.

Alaska natural gas is any gas derived from an area of the State of Alaska lying north of 64 degrees North latitude, but not including the Alaska National Wildlife Refuge.

The credit is part of the general business credit.

EFFECTIVE DATE

The proposal is effective on the date of enactment.

K. CERTAIN ALASKA PIPELINE SYSTEMS TREATED AS SEVEN-YEAR PROPERTY

(Sec. 512 of the bill and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the ''class life of the property.'' The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56. Assets used in the private, commercial, and contract carrying of petroleum, gas and other products by means of pipes and conveyors are assigned a 15–year recovery period and a class life of 22 years.

REASONS FOR CHANCE

The Committee recognizes that, on our present course, the nation will be ever more reliant on foreign governments, that do not always have America's interest at heart, for oil and natural gas. The Committee recognizes that even with conservation efforts and alternative sources of energy that our nation's long-term security depends on reducing our reliance on foreign energy sources. In light of this, the Committee believes it is appropriate to reduce the recovery period, and thus the cost of capital, for investment in natural gas pipeline systems in Alaska that meet certain requirements.

EXPLANATION OF PROVISION

The provision establishes a statutory seven-year recovery period and a class life of 10 years for any natural gas pipeline system, located in Alaska, that has a capacity greater than five hundred billion Btu of natural gas per day and is placed in service after 2014. For purposes of the proposal, a natural gas pipeline system is defined as any system used in the carrying of natural gas by means of pipes, including pipe, trunk lines, related equipment, and appurtenances. It does not include any gas treatment plant related to such pipeline.

EFFECTIVE DATE

The proposal is effective on the date of enactment.

L. EXEMPT CERTAIN PREPAYMENTS FOR NATURAL GAS FROM TAX-EXEMPT BOND ARBITRAGE RULES

(Sec. 513 of the bill and sec. 148 of the Code)

PRESENT LAW

Interest on bonds issued by States or local governments to finance activities carried out or paid for by those entities generally is exempt from income tax (sec. 103). Restrictions are imposed on the ability of States or local governments to invest the proceeds of these bonds for profit (the ''arbitrage restrictions''). One such restriction limits the use of bond proceeds to acquire ''investment type property.'' A prepayment for property or services may give rise to investment-type property. A prepayment can produce prohibited arbitrage profits when the discount received for prepaying the costs exceeds the yield on the tax-exempt bonds. In general, prohibited prepayments include all prepayments that are not customary in an industry by both beneficiaries of tax-exempt bonds and other persons using taxable financing for the same transaction.

On April 17, 2002, the Department of the Treasury issued proposed regulations regarding arbitrage and private activity restrictions applicable to tax-exempt bonds issued by State and local governments. The proposed regulations add an exception to the definition of investment type property for certain natural gas prepayments that are made by or for one or more utilities that are owned by a governmental person. The exception applies if at least 95 percent of the natural gas purchased with the prepayment is to be (1) consumed by retail customers in the service area of a municipal gas utility, or (2) used to produce electricity that will be furnished to retail customers that a municipal electric utility is obligated to serve under State or Federal law. An obligation that arises solely because of a contract is not an obligation to serve under State or Federal law. For this purpose, the service area of a municipal gas utility is defined as (1) any area throughout which the municipal utility provided (at all times during the five-year period ending on the issue date) gas transmission or distribution service, and any area that is contiguous to such an area, or (2) any area where the municipal utility is obligated under State or Federal law to provide gas distribution services as provided in such law. Issuers may apply principles similar to the rules governing private use to cure a violation of the 95 percent requirement.

A prepayment will not fail to meet the requirements for prepaid gas contracts by reason of any commodity swap contract that may be entered into between the issuer and an unrelated party (other than the gas supplier), or between the gas supplier and an unrelated party (other than the issuer), so long as each swap contract is an independent contract. A swap contract is an independent contract if the obligation of each party to perform under the swap contract is not dependent on performance by any person (other than the other party to the swap contract) under another contract (for example, a gas contract or another swap contract). A natural gas commodity swap contract will not fail to be an independent contract solely because the swap contract may terminate in the event of a failure of a gas supplier to deliver gas for which the swap contract is a hedge. The Commissioner may, by published guidance, set forth additional circumstances in which a prepayment does not give rise to investment type property.

REASONS FOR CHANGE

The Committee determined that it was appropriate to complement the proposed Treasury regulations with a safe harbor that provides certainty on the date of issuance that prepayments for natural gas within the safe harbor will not violate the arbitrage rules. This provision will ensure adequate supplies of natural gas at predictable prices for natural gas utility customers without sacrificing to a great degree the appropriate present-law limitations regarding tax-exempt bond issuance for the purchase of investment property. The Committee believes that this proposal strikes an appropriate balance between these two competing policies. The creation of this safe harbor is not intended to limit the Secretary's regulatory authority to identify other situations in which prepayments do not give rise to investment type property.

EXPLANATION OF PROVISION

In general

The provision creates a safe harbor exception to the general rule that tax-exempt bondfinanced prepayments violate the arbitrage restrictions. The term ''investment type property'' does not include a prepayment under a qualified natural gas supply contract. The provision also provides that such prepayments are not treated as private loans for purposes of the private business tests.

Under the provision, a prepayment financed with tax-exempt bond proceeds for the purpose of obtaining a supply of natural gas for service area customers of a governmental utility is not treated as the acquisition of investment-type property. A contract is a qualified natural gas supply contract if the volume of natural gas secured for any

year covered by the prepayment does not exceed the sum of (1) the average annual natural gas purchased (other than for resale) by customers of the utility within the service area of the utility (''retail natural gas consumption'') during the testing period, and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility. The testing period is the 5-calendar-year period immediately preceding the calendar year in which the bonds are issued. A retail customer is one who does not purchase natural gas for resale. Natural gas used to generate electricity by a governmental utility is counted as retail natural gas consumption if the electricity was sold to retail customers within the service area of the governmental electric utility.

With respect to qualified natural gas supply contracts entered into by joint action agencies acting for or on behalf of one or more governmental utilities, the requirements of the safe harbor are tested at the utility level. A joint action agency shall be treated as the agent of the utility when selling directly to a retail customer within that utility's service area.

Adiustments

The volume of gas permitted by the general rule is reduced by natural gas otherwise available on the date of issuance. Specifically, the amount of natural gas permitted to be acquired under a qualified natural gas supply contract for any period is to be reduced by the applicable share of natural gas held by the utility on the date of issuance of the bonds and natural gas that the utility has a right to acquire for the prepayment period (determined as of the date of issuance). For purposes of the preceding sentence, applicable share means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

For purposes of the safe harbor, if after the close of the testing period and before the issue date of the bonds (1) the governmental utility enters into a contract to supply natural gas (other than for resale) for use by a business at a property within the service area of such utility and (2) the gas consumption for such property was not included in the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period, then the amount of gas permitted to be purchased may be increased to accommodate the contract.

The average annual retail natural gas consumption calculation for purposes of the safe harbor, however, is not to exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

Intentional acts

The safe harbor does not apply if the utility engages in intentional acts to render the volume of natural gas covered by the prepayment to be in excess of that needed for (1) retail natural gas consumption, and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility. Sales to dispose of excess gas outside the service area that are necessitated by circumstances beyond the control of the utility, such as weather conditions, are not considered intentional acts to render the prepaid gas supply in excess of the utility's needs.

Definition of service area

Service area is defined as (1) any area throughout which the governmental utility provided (at all times during the testing period) in the case of a natural gas utility, natural gas transmission or distribution service, or in the case of an electric utility, electric distribution service; (2) limited areas contiguous to such areas, and (3) any area recognized as the service area of the governmental utility under State or Federal law. Contiguous areas are limited to any area within a county contiguous to the area described in (1) in which retail customers of the utility are located if such area is not also served by another utility providing the same service.

Ruling request for higher prepayment amounts

Upon written request, the Secretary may allow an issuer to prepay for an amount of gas greater than that allowed by the safe harbor based on objective evidence of growth in gas consumption or population that demonstrates that the amount permitted by the exception is insufficient.

EFFECTIVE DATE

The provision is effective for obligations issued after the date of enactment.

TITLE VI—ELECTRIC UTILITY RESTRUCTURING PROVISIONS

A. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS

(Sec. 601 of the bill and sec. 468A of the Code)

PRESENT LAW

Overview

Special rules dealing with nuclear decommissioning reserve funds were adopted by Congress in the Deficit Reduction Act of 1984 (''1984 Act''), when tax issues regarding the time value of money were addressed generally. Under general tax accounting rules, a deduction for accrual basis taxpayers is deferred until there is economic performance for the item for which the deduction is claimed. However, the 1984 Act contains an exception under which a taxpayer responsible for nuclear powerplant decommissioning may elect to deduct contributions made to a qualified nuclear decommissioning fund for future decommissioning costs. Taxpayers who do not elect this provision are subject to general tax accounting rules.

Qualified nuclear decommissioning fund

A qualified nuclear decommissioning fund (a ''qualified fund'') is a segregated fund established by a taxpayer that is used exclusively for the payment of decommissioning costs, taxes on fund income, management costs of the fund, and for making investments. The income of the fund is taxed at a reduced rate of 20 percent for taxable years beginning after December 31, 1995.

Contributions to a qualified fund are deductible in the year made to the extent that these amounts were collected as part of the cost of service to ratepayers (the ''cost of service requirement''). Funds withdrawn by the taxpayer to pay for decommissioning costs are included in the taxpayer's income, but the taxpayer also is entitled to a deduction for decommissioning costs as economic performance for such costs occurs.

Accumulations in a qualified fund are limited to the amount required to fund decommissioning costs of a nuclear powerplant for the period during which the qualified fund is in existence (generally post-1984 decommissioning costs of a nuclear powerplant). For this purpose, decommissioning costs are considered to accrue ratably over a nuclear powerplant's estimated useful life. In order to prevent accumulations of funds over the remaining life of a nuclear powerplant in excess of those required to pay future decommissioning costs of such nuclear powerplant and to ensure that contributions to a qualified fund are not deducted more rapidly than level funding (taking into account an appropriate discount rate), taxpayers must obtain a ruling from the IRS to establish the maximum annual contribution that may be made to a qualified fund (the ''ruling amount''). In certain instances (e.g., change in estimates), a taxpayer is required to obtain a new ruling amount to reflect updated information.

A qualified fund may be transferred in connection with the sale, exchange or other transfer of the nuclear powerplant to which it relates. If the transferee is a regulated public utility and meets certain other requirements, the transfer will be treated as a nontaxable transaction. No gain or loss will be recognized on the transfer of the qualified fund and the transferee will take the transferor's basis in the fund. The transferee is required to obtain a new ruling amount from the IRS or accept a discretionary determination by the IRS.

Nonqualified nuclear decommissioning funds

Federal and State regulators may require utilities to set aside funds for nuclear decommissioning costs in excess of the amount allowed as a deductible contribution to a qualified fund. In addition, taxpayers may have set aside funds prior to the effective date of the qualified fund rules. The treatment of amounts set aside for decommissioning costs prior to 1984 varies. Some taxpayers may have received no tax benefit while others may have deducted such amounts or excluded such amounts from income. Since 1984, taxpayers have been required to include in gross income customer charges for decommissioning costs (sec. 88), and a deduction has not been allowed for amounts set aside to pay for decommissioning costs except through the use of a qualified fund. Income earned in a nonqualified fund is taxable to the fund's owner as it is earned.

REASONS FOR CHANGE

The Committee does not believe a utility should be denied the opportunity to contribute to a qualified fund simply because it operates in a deregulated environment. The Committee also believes that it is appropriate to permit all decommissioning costs associated with a nuclear powerplant to be funded through a qualified fund. In addition, the Committee recognizes the importance of providing clear and concise rules to minimize disputes between taxpayers and the IRS.

EXPLANATION OF PROVISION

Repeal of cost of service requirement

The provision repeals the cost of service requirement for deductible contributions to a nuclear decommissioning fund. Thus, all taxpayers, including unregulated taxpayers, would be allowed a deduction for amounts contributed to a qualified fund.

Permit contributions to a qualified fund for pre-1984 decommissioning costs

The proposal also repeals the limitation that a qualified fund only accumulate an amount sufficient to pay for a nuclear powerplant's decommissioning costs incurred during the period that the qualified fund is in existence (generally post-1984 decommissioning costs). Thus, any taxpayer is permitted to accumulate an amount sufficient to cover the present value of 100 percent of a nuclear powerplant's estimated decommissioning costs in a qualified fund. The proposal does not change the requirement that contributions to a qualified fund not be deducted more rapidly than level funding.

Clarify treatment of transfers of qualified funds

The provision clarifies the Federal income tax treatment of the transfer of a qualified fund. No gain or loss would be recognized to the transferor or the transferee (or the qualified fund) as a result of the transfer of a qualified fund in connection with the transfer of the powerplant with respect to which such fund was established.

Exception to ruling amount for certain decommissioning costs

The provision permits a taxpayer to make contributions to a qualified fund in excess of the ruling amount in one circumstance. Specifically, a taxpayer is permitted to contribute up to the present value of the amount required to fund a nuclear powerplant's decommissioning costs which under present law section 468A(d)(2)(A) is not permitted to be accumulated in a qualified fund (generally pre-1984 decommissioning costs). It is anticipated that an amount that is permitted to be contributed under this special rule shall be determined using the estimate of total decommissioning costs used for purposes of determining the taxpayer's most recent ruling amount. Any amount transferred to the qualified fund under this special rule that has not previously been deducted, or excluded from gross income is allowed as a deduction over the remaining useful life of the nuclear powerplant. If a qualified fund that has received amounts under this rule is transferred to another person, that person will be entitled to the deduction at the same time and in the same manner as the transferor. Thus, if the transferor was not subject to tax at the time and thus would have been unable to use the deduction, the transferee will similarly not be able to utilize the deduction.

EFFECTIVE DATE

The provision is effective for taxable years beginning after date of enactment.

B. TREATMENT OF CERTAIN INCOME OF COOPERATIVES

(Sec. 602 of the bill and sec. 501 of the Code)

PRESENT LAW

In general

Under present law, an entity must be operated on a cooperative basis in order to be treated as a cooperative for Federal income tax purposes. Although not defined by statute or regulation, the two principal criteria for determining whether an entity is operating on a cooperative basis are: (1) ownership of the cooperative by persons who patronize the cooperative; and (2) return of earnings to patrons in proportion to their patronage. The IRS requires that cooperatives must operate under the following principles: (1) subordination of capital in control over the cooperative undertaking and in ownership of the financial benefits from the cooperative; (2) democratic control by the members of the cooperative; (3) vesting in and allocation among the members of all excess of operating revenues over the expenses incurred to generate revenues in proportion to their participation in the cooperative (patronage); and (4) operation at cost (not operating for profit or below cost)

In general, cooperative members are those who participate in the management of the cooperative and who share in patronage capital. As described below, income from the sale of electric energy by an electric cooperative may be member or non-member income to the cooperative, depending on the membership status of the purchaser. A municipal corporation may be a member of a cooperative.

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception—the cooperative may exclude from its taxable income distributions of patronage dividends. In general, patronage dividends are the profits of the cooperative that are rebated to its patrons pursuant to a pre-existing obligation of the cooperative to do so. The rebate must be made in some equitable fashion on the basis of the quantity or value of business done with the cooperative.

Except for tax-exempt farmers' cooperatives, cooperatives that are subject to the cooperative tax rules of subchapter T of the Code (sec. 1381, et seq.) are permitted a deduction for patronage dividends from their taxable income only to the extent of net income that is derived from transactions with patrons who are members of the cooperative (sec. 1382). The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative.

Cooperatives that qualify as tax-exempt farmers' cooperatives are permitted to exclude patronage dividends from their taxable income to the extent of all net income, including net income that is derived from transactions with patrons who are not members of the cooperative, provided the value of transactions with patrons who are not members of the cooperative does not exceed the value of transactions with patrons who are members of the cooperative (sec. 521).

Taxation of electric cooperatives exempt from subchapter T

In general, the cooperative tax rules of subchapter T apply to any corporation operating on a cooperative basis (except mutual savings banks, insurance companies, other tax-exempt organizations, and certain utilities), including tax-exempt farmers' cooperatives (described in sec. 521(b)). However, subchapter T does not apply to an organization that is ''engaged in furnishing electric energy, or providing telephone service, to persons in rural areas'' (sec. 1381(a)(2)(C)). Instead, electric cooperatives are taxed under rules that were generally applicable to cooperatives prior to the enactment of subchapter T in 1962. Under these rules, an electric cooperative can exclude patronage dividends from taxable income to the extent of all net income of the cooperative, including net income derived from transactions with patrons who are not members of the cooperative.

Tax exemption of rural electric cooperatives

Section 501(c)(12) provides an income tax exemption for rural electric cooperatives if at least 85 percent of the cooperative's income consists of amounts collected from members for the sole purpose of meeting losses and expenses of providing service to its members. The IRS takes the position that rural electric cooperatives also must comply with the fundamental cooperative principles described above in order to qualify for tax exemption under section 501(c)(12). The 85-percent test is determined without taking into account any income from qualified pole rentals and cancellation of indebtedness income from the prepayment of a loan under sections 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987). The exclusion for cancellation of indebtedness income applies to such income arising in 1987, 1988, or 1989 on debt that either originated with, or is guaranteed by, the Federal Government. Rural electric cooperatives generally are subject to the tax on unrelated trade or business income under section 511.

REASONS FOR CHANGE

The purpose of the 85-percent test under section 501(c)(12) is to ensure that the primary activities of a tax-exempt electric cooperative fulfill the statutory purpose of providing electricity services to the members of the cooperative. Similarly, the fundamental cooperative principles described above are the defining characteristics of a cooperative upon which the Federal tax rules condition conduit treatment.

The Committee believes that the nature of an electric cooperative's activities does not change because it has income from open access transactions with non-members or from nuclear decommissioning transactions (as these terms are defined in the bill). Accordingly, the Committee believes that the 85-percent test for tax exemption under present law should be applied without regard to such income. The Committee intends that the term ''open access transaction'' shall be applied in a manner that allows an electric cooperative to carry out its statutory purpose in a restructured electric energy market environment without adversely impacting its tax-exempt status.

For similar reasons, the Committee believes that the 85-percent test for tax exemption under present law should be applied without regard to cancellation of indebtedness income from the prepayment of certain loans that are provided, insured, or guaranteed by the Federal government, as well as income from certain transactions that would otherwise qualify for deferred gain recognition under section 1031 or 1033.

The Committee further believes that electric energy sales to nonmembers should not result in a loss of tax-exempt status or cooperative status to the extent that such sales are necessary to replace lost sales of electric energy to members as a result of restructuring of the electric energy industry. Accordingly, the Committee believes that replacement electric energy sales to nonmembers (defined as ''load loss transactions'' in the bill) should be treated, for a limited period of time, as member income in applying the 85-percent test for tax exemption of rural electric cooperatives. The Committee believes that such treatment also should apply for purposes of determining whether tax-exempt and taxable electric cooperatives comply with the fundamental cooperative principles. Finally, the Committee believes that income from replacement electric energy sales should not be subject to the tax on unrelated trade or business income under Code section 511.

EXPLANATION OF PROVISION

Treatment of income from open access transactions

The bill provides that income received or accrued by a rural electric cooperative from any ''open access transaction'' (other than income received or accrued directly or indirectly from a member of the cooperative) is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The term ''open access transaction'' is defined as—

(1) the provision or sale of electric energy transmission services or ancillary services on a nondiscriminatory open access basis: (i) pursuant to an open access transmission tariff filed with and approved by the Federal Energy Regulatory Commission (''FERC'') (including acceptable reciprocity tariffs), but only if (in the case of a voluntarily filed tariff) the cooperative files a report with FERC within 90 days of enactment of this provision relating to whether or not the cooperative will join a regional transmission organization (''RTO''); or (ii) under an RTO agreement approved by FERC (including an agreement providing for the transfer of control—but not ownership—of transmission facilities);

(2) the provision or sale of electric energy distribution services or ancillary services on a nondiscriminatory open access basis to end-users served by distribution facilities owned by the cooperative or its members; or

(3) the delivery or sale of electric energy on a nondiscriminatory open access basis, provided that such electric energy is generated by a generation facility that is directly connected to distribution facilities owned by the cooperative (or its members) which owns the generation facility.

For purposes of the 85-percent test, the bill also provides that income received or accrued by a rural electric cooperative from any ''open access transaction'' is treated as an amount collected from members for the sole purpose of meeting losses and expenses if the income is received or accrued indirectly from a member of the cooperative.

Treatment of income from nuclear decommissioning transactions

The bill provides that income received or accrued by a rural electric cooperative from any ''nuclear decommissioning transaction'' also is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The term ''nuclear decommissioning transaction'' is defined as—

(1) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the cooperative's interest in a nuclear powerplant or nuclear powerplant unit;

(2) any distribution from a trust, fund, or instrument established to pay any nuclear decommissioning costs; or

(3) any earnings from a trust, fund, or instrument established to pay any nuclear decommissioning costs.

Treatment of income from asset exchange or conversion transactions

The bill provides that gain realized by a tax-exempt rural electric cooperative from a voluntary exchange or involuntary conversion of certain property is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). This provision only applies to the extent that: (1) the gain would qualify for deferred recognition under section 1031 (relating to exchanges of property held for productive use or investment) or section 1033 (relating to involuntary conversions); and (2) the replacement property that is acquired by the cooperative pursuant to section 1031 or section 1033 (as the case may be) constitutes property that is used, or to be used, for the purpose of generating, transmitting, distributing, or selling electricity or methane-based natural gas.

Treatment of cancellation of indebtedness income from prepayment of certain loans

The bill provides that income from the prepayment of any loan, debt, or obligation of a tax-exempt rural electric cooperative that is originated, insured, or guaranteed by the Federal Government under the Rural Electrification Act of 1936 is excluded in determining whether the cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12)

Treatment of income from load loss transactions

Tax-exempt rural electric cooperatives.—The bill provides that income received or accrued by a tax-exempt rural electric cooperative from a ''load loss transaction'' is treated under 501(c)(12) as income collected from members for the sole purpose of meeting losses and expenses of providing service to its members. Therefore, income from load loss transactions is treated as member income in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The bill also provides that income from load loss transactions does not cause a tax-exempt electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

The term ''load loss transaction'' is generally defined as any wholesale or retail sale of electric energy (other than to a member of the cooperative) to the extent that the aggregate amount of such sales during a seven-year period beginning with the ''start-up year'' does not exceed the reduction in the amount of sales of electric energy during such period by the cooperative to members. The ''start-up year'' is defined as the calendar year which includes the date of enactment of this provision or, if later, at the election of the cooperative: (1) the first year that the cooperative offers nondiscriminatory open access; or (2) the first year in which at least 10 percent of the cooperative's sales of electric energy are to patrons who are not members of the cooperative.

The bill also excludes income received or accrued by rural electric cooperatives from load loss transactions from the tax on unrelated trade or business income.

Taxable electric cooperatives.—The bill provides that the receipt or accrual of income from load loss transactions by taxable electric cooperatives is treated as income from patrons who are members of the cooperative. Thus, income from a load loss transaction is excludible from the taxable income of a taxable electric cooperative if the cooperative distributes such income pursuant to a pre-existing contract to distribute the income to a patron who is not a member of the cooperative. The bill also provides that income from load loss transactions does not cause a taxable electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

EFFECTIVE DATE

This provision is effective for taxable years beginning after the date of enactment.

C. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY

(Sec. 603 of the bill and sec. 451 of the Code)

PRESENT LAW

Generally, a taxpayer recognizes gain to the extent the sales price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

REASONS FOR CHANGE

The Committee recognizes that electric deregulation has been occurring, and is continuing to occur, at both the Federal and State level. Federal and state energy regulators are calling for the ''unbundling'' of electric transmission assets held by vertically integrated utilities, with the transmission assets ultimately placed under the ownership or control of independent transmission providers (or other similarly-approved operators). This policy is intended to improve transmission management and facilitate the formation of competitive markets. To facilitate the implementation of these policy objectives, the Committee believes it is appropriate to assist taxpayers in moving forward with industry restructuring by providing a tax deferral for gain associated with certain dispositions of electric transmission assets.

EXPLANATION OF PROVISION

The provision permits a taxpayer to elect to recognize gain from a qualifying electric transmission transaction ratably over an eight-year period beginning in the year of sale. A qualifying electric transmission transaction is the sale or other disposition of property used by the taxpayer in the trade or business of providing electric transmission services, or an ownership interest in such an entity, to an independent transmission company prior to January 1, 2008.

A taxpayer electing the application of the provision is required to attach a statement to that effect in the tax return for the taxable year in which the transaction takes place in the manner as the Secretary shall prescribe. The election shall be binding for that taxable year and all subsequent taxable years.

EFFECTIVE DATE

The provision is effective for transactions occurring after the date of enactment.

TITLE VII—ADDITIONAL PROVISIONS

A. EXTENSION OF ACCELERATED DEPRECIATION AND WAGE CREDIT BENEFITS ON INDIAN RESERVATIONS

(Sec. 701 of the bill and secs. 45A and 1680(j) of the Code)

PRESENT LAW

Present law includes the following tax incentives for businesses located within Indian reservations.

Accelerated depreciation

With respect to certain property used in connection with the conduct of a trade or business within an Indian reservation, depreciation deductions under section 1680(j) will be determined using the following recovery periods:

3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years

''Qualified Indian reservation property'' eligible for accelerated depreciation includes property which is (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, (2) not used or located outside the reservation on a regular basis, (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and (4) described in the recovery-period table above. In addition, property is not ''qualified Indian reservation property'' if it is placed in service for purposes of conducting gaming activities. Certain ''qualified infrastructure property'' may be eligible for the accelerated depreciation even if located outside an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (e.g., roads, power lines, water systems, railroad spurs, and communications facilities).

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax. The accelerated depreciation for Indian reservations is available with respect to property placed in service on or after January 1, 1994, and before January 1, 2005.

Indian employment credit

In general, a credit against income tax liability is allowed to employers for the first $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to certain employees (sec. 45A). The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs during the current year over the amount of such wages and costs incurred by the employer during 1993. The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to $20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993. No deduction is allowed for the portion of the wages equal to the amount of the credit.

Qualified wages means wages paid or incurred by an employer for services performed by a qualified employee. A qualified employee means any employee who is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe, who performs substantially all of the services within an Indian reservation, and whose principal place of abode while performing such services is on or near the reservation in which the services are performed. An employee will not be treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during the taxable year exceeds an amount determined at an annual rate of $30,000 (adjusted for inflation after 1993).

The wage credit is available for wages paid or incurred on or after January 1, 1994, in taxable years that begin before December 31, 2004.

REASONS FOR CHANGE

The Committee recognizes the significant potential on Indian lands for development of energy resources and other projects. The special nature of Native American tribes and high poverty rates in certain areas in some circumstances create unique barriers to development that these incentives help overcome. The Committee understands that a significant portion of these incentives are used in development of energy projects.

The Committee concluded that extending the accelerated depreciation and wage credit tax incentives within Indian reservations will both increase the supply of energy and expand business and employment opportunities in these areas.

EXPLANATION OF PROVISION

Accelerated depreciation

The provision extends the accelerated depreciation incentive for one year (to property placed in service before January 1, 2006).

Indian employment credit

The provision extends the Indian employment credit incentive for one year (to taxable years beginning before January 1, 2006).

EFFECTIVE DATE

The provision is effective on the date of enactment.

B. GAO STUDY

(Sec. 702 of the bill)

PRESENT LAW

Present law does not require study of the present law provisions relating to clean fuel vehicles and electric vehicles.

REASONS FOR CHANGE

The Committee believes it is important to gain information on the value of benefits compared to costs in order to make informed decisions regarding the propriety of special tax treatment of various products or technologies designed to reduce dependence on petroleum, reduce emissions of pollutants, or to promote energy conservation. The Committee believes it is important to have measures of the amount of conservation or reduction in pollution that results from provisions designed to achieve such results.

EXPLANATION OF PROVISION

The bill directs the Comptroller General to undertake an ongoing analysis of the effectiveness of the tax credits allowed to alternative motor vehicles and the tax credits allowed to various alternative fuels under Title II of the bill and the tax credits and enhanced deductions allowed for energy conservation and efficiency under Title III of the bill. The studies should estimate the energy savings and reductions in pollutants achieved from taxpayer utilization of these provisions. The studies should estimate the dollar value of the benefits of reduced energy consumption and reduced air pollution in comparison to estimates of the revenue cost of these provisions to the U.S. Treasury. The studies should include an analysis of the distribution of the taxpayers who utilize these provisions by income and other relevant characteristics.

The bill directs the Comptroller General to submit annual reports to Congress beginning not later than December 31, 2004.

EFFECTIVE DATE

The provision is effective on the date of enactment.

C. REPEAL CERTAIN EXCISE TAXES ON RAIL DIESEL FUEL AND INLAND WATERWAY BARGE FUELS

(Sec. 703 of the bill and secs. 4041 and 4042 of the Code)

PRESENT LAW

Under present law, diesel fuel used in trains is subject to a 4.4-cents-per gallon excise tax. Revenues from 4.3 cents per gallon of this excise tax are retained in the General Fund of the Treasury. The remaining 0.1-cent per gallon is deposited in the Leaking Underground Storage Tank (''LUST'') Trust Fund.

Similarly, fuel used in barges operating on the designated inland waterways system is subject to a 4.3-cents-per-gallon General Fund excise tax. This tax is in addition to the 20.1-cents-per-gallon tax rates that is imposed on fuels used in these barges to fund the Inland Waterways Trust Fund and the Leaking Underground Storage Tank Trust Fund.

In both cases, the 4.3-cents-per-gallon excise tax rates are permanent. The LUST Trust Fund tax is scheduled to expire after March 31, 2005.

REASONS FOR CHANGE

The Committee notes that in 1993, the Congress enacted the present-law 4.3-cents-per-gallon excise tax on motor fuels as a deficit reduction measure, with the receipts payable to the General Fund. Since that time, the Congress has diverted the 4.3-cents-per-gallon excise tax for most uses to specified trust funds that provide benefits for those motor fuel users who ultimately bear the burden of these taxes. As a result, the Committee finds that generally only rail and barge operators remain as motor fuel users subject to the 4.3-cents-per-gallon excise tax who receive no benefits from a dedicated trust fund as a result of their tax burden. The Committee observes that rail and barge operators compete with other transportation service providers who benefit from expenditures paid from dedicated trust funds. The Committee concludes that it is inequitable and distortive of transportation decisions to continue to impose the 4.3-cents-per-gallon excise tax on diesel fuel used in trains and barges.

EXPLANATION OF PROVISION

The 4.3-cents-per-gallon General Fund excise tax rate on diesel fuel used in trains and fuels used in barges operating on the designated inland waterways system is repealed. The 0.1 cent per gallon for the Leaking Underground Storage Tank (''LUST'') Trust Fund is unchanged by the provision.

EFFECTIVE DATE

The proposal is effective on January 1, 2004.

D. MODIFY RESEARCH CREDIT FOR RESEARCH RELATING TO ENERGY

(Sec. 704 of the bill and sec. 41 of the Code)

PRESENT LAW

General rule

Section 41 provides for a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenses for a taxable year exceed its base amount for that year. The research tax credit is scheduled to expire and generally will not apply to amounts paid or incurred after June 30, 2004.

A 20-percent research tax credit also applied to the excess of (1) 100 percent of corporate cash expenses (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) over (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate credit computation is commonly referred to as the university basic research credit (see sec. 41(e)).

Alternative incremental research credit regime

Taxpayers are allowed to elect an alternative incremental research credit regime. If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced. Under the alternative credit regime, a credit rate of 2.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of one percent (i.e., the base amount equals one percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 3.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of two percent. A credit rate of 3.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of two percent. An election to be subject to this alternative incremental credit regime may be made for any taxable year beginning after June 30, 1996, and such an election applies to that taxable year and all subsequent years unless revoked with the consent of the Secretary of the Treasury.

Eligible expenses

Qualified research expenses eligible for the research tax credit consist of: (1) in-house expenses of the taxpayer for wages and supplies attributable to qualified research; (2) certain time-sharing costs for computer use in qualified research; and (3) 65 percent of amounts paid or incurred by the taxpayer to certain other persons for qualified research conducted on the taxpayer's behalf (so-called contract research expenses). In the case of amounts paid to a research consortium, 75 percent of amounts paid for qualified research is treated as qualified research expenses eligible for the research credit (rather than 65 percent under the general rule) if (1) such research consortium is a tax-exempt organization that is described in section 501(c)(3) (other than a private foundation) or section 501(c)(6) and is organized and operated primarily to conduct scientific research, and (2) such qualified research is conducted by the consortium on behalf of the taxpayer and one or more persons not related to the taxpayer.

To be eligible for the credit, the research must not only satisfy the requirements of present-law section 174 for the deduction for research expenses, but must be undertaken for the purpose of discovering information

that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and substantially all of the activities of which must constitute elements of a process of experimentation for functional aspects, performance, reliability, or quality of a business component.

REASONS FOR CHANGE

The Committee believes that research into energy production and energy conservation will help reduce pollution and enhance energy independence in the future.

EXPLANATION OF PROVISION

The bill modifies the present-law research credit as it applies to qualified energy research. In particular, the provision provides that the taxpayer may claim a credit equal to 20 percent of the taxpayer's expenditures on qualified energy research undertaken by an energy research consortium. The amount of credit claimed is determined only by regard to such expenditures by the taxpayer within the taxable year. Unlike the general rule for the research credit, the 20-percent credit for research by an energy research consortium applies to all such expenditures, not only those in excess of a base amount however determined. An energy research consortium is a qualified research consortium as under present law that also is organized and operated primarily to conduct energy research and development in the public interest and to which at least five unrelated persons paid, or incurred amounts, to such organization within the calendar year. In addition, to be a qualified energy research consortium no single person shall pay or incur more than 50 percent of the total amounts received by the research consortium during the calendar year.

The bill also provides that 100 percent of amounts paid or incurred by the taxpayer to eligible small businesses, universities, and Federal for qualified energy research would constitute qualified research expenses as contract research expenses, rather than 65 percent of qualified research expenditures allowed under present law. An eligible small business for this purpose is a business in which the taxpayer does not own a 50 percent or greater interest and the business has employed, on average, 500 or fewer employees in the two preceding calendar years.

Qualified energy research expenditures are expenditures that would otherwise qualify for the research credit under present law and relate to the production, supply, and conservation of energy, including otherwise qualifying research expenditures related to alternative energy sources or the use of alternative energy sources. For example, research relating to hydrogen fuel cell vehicles would qualify under this provision, if the research expenditures otherwise satisfy the criteria of present-law sec. 41. Likewise, otherwise qualifying research undertaken to improve the energy-efficiency of lighting would qualify under this provision.

EFFECTIVE DATE

The provision is effective for amounts paid or incurred after the date of enactment in taxable years ending after such date.

TITLE VIII—REVENUE PROVISIONS

A. Provisions Designed To Curtail Tax Shelters

1. Penalty for failure to disclose reportable transactions (sec. 801 of the bill and new sec. 6707A of the Code)

PRESENT LAW

Regulations under section 6011 require a taxpayer to disclose with its tax return certain information with respect to each ''reportable transaction'' in which the taxpayer participates.

There are six categories of reportable transactions. The first category is any transaction that is the same as (or substantially similar to) a transaction that is specified by the Treasury Department as a tax avoidance transaction whose tax benefits are subject to disallowance under present law (referred to as a ''listed transaction'').

The second category is any transaction that is offered under conditions of confidentiality. In general, if a taxpayer's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of any person who makes or provides a statement, oral or written, as to the potential tax consequences that may result from the transaction, it is considered offered under conditions of confidentiality (whether or not the understanding is legally binding).

The third category of reportable transactions is any transaction for which (1) the taxpayer has the right to a full or partial refund of fees if the intended tax consequences from the transaction are not sustained or, (2) the fees are contingent on the intended tax consequences from the transaction being sustained.

The fourth category of reportable transactions relates to any transaction resulting in a taxpayer claiming a loss (under section 165) of at least (1) $10 million in any single year or $20 million in any combination of years by a corporate taxpayer or a partnership with only corporate partners; (2) $2 million in any single year or $4 million in any combination of years by all other partnerships, S corporations, trusts, and individuals; or (3) $50,000 in any single year for individuals or trusts if the loss arises with respect to foreign currency translation losses.

The fifth category of reportable transactions refers to any transaction done by certain taxpayers in which the tax treatment of the transaction differs (or is expected to differ) by more than $10 million from its treatment for book purposes (using generally accepted accounting principles) in any year.

The final category of reportable transactions is any transaction that results in a tax credit exceeding $250,000 (including a foreign tax credit) if the taxpayer holds the underlying asset for less than 45 days.

Under present law, there is no specific penalty for failing to disclose a reportable transaction; however, such a failure may jeopardize a taxpayer's ability to claim that any income tax understatement attributable to such undisclosed transaction is due to reasonable cause, and that the taxpayer acted in good faith.

REASONS FOR CHANGE

The Committee is aware that individuals and corporations are increasingly using sophisticated transactions to avoid or evade Federal income tax. Such a phenomenon could pose a serious threat to the efficacy of the tax system because of both the potential loss of revenue and the potential threat to the integrity and perceived fairness of the self-assessment system.

The Committee over two years ago began working on legislation to address this significant compliance problem. In addition, the Treasury Department, using the tools available, issued regulations requiring disclosure of certain transactions and requiring organizers and promoters of tax-engineered transactions to maintain customer lists and make these lists available to the IRS. Nevertheless, the Committee believes that additional legislation is needed to provide the Treasury Department with additional tools to assist its efforts to curtail abusive transactions. Moreover, the Committee believes that a penalty for failing to make the required disclosures, when the imposition of such penalty is not dependent on the tax treatment of the underlying transaction ultimately being sustained, will provide an additional incentive for taxpayers to satisfy their reporting obligations under the new disclosure provisions.

EXPLANATION OF PROVISION

In general

The bill creates a new penalty for any person who fails to include with any return or statement any required information with respect to a reportable transaction. The new penalty applies without regard to whether the transaction ultimately results in an understatement of tax, and applies in addition to any accuracy-related penalty that may be imposed.

Transactions to be disclosed

The bill does not define the terms ''listed transaction'' or ''reportable transaction,'' nor does the bill explain the type of information that must be disclosed in order to avoid the imposition of a penalty. Rather, the bill authorizes the Treasury Department to define a ''listed transaction'' and a ''reportable transaction'' under section 6011.

Penalty rate

The penalty for failing to disclose a reportable transaction is $50,000. The amount is increased to $100,000 if the failure is with respect to a listed transaction. For large entities and high net worth individuals, the penalty amount is doubled (i.e., $100,000 for a reportable transaction and $200,000 for a listed transaction). The penalty cannot be waived with respect to a listed transaction. As to reportable transactions, the penalty can be rescinded (or abated) only if: (1) the taxpayer on whom the penalty is imposed has a history of complying with the Federal tax laws, (2) it is shown that the violation is due to an unintentional mistake of fact, (3) imposing the penalty would be against equity and good conscience, and (4) rescinding the penalty would promote compliance with the tax laws and effective tax administration. The authority to rescind the penalty can only be exercised by the IRS Commissioner personally or the head of the Office of Tax Shelter Analysis. Thus, the penalty cannot be rescinded by a revenue agent, an Appeals officer, or any other IRS personnel. The decision to rescind a penalty must be accompanied by a record describing the facts and reasons for the action and the amount rescinded. There will be no taxpayer right to appeal a refusal to rescind a penalty. The IRS also is required to submit an annual report to Congress summarizing the application of the disclosure penalties and providing a description of each penalty rescinded under this provision and the reasons for the rescission.

A ''large entity'' is defined as any entity with gross receipts in excess of $10 million in the year of the transaction or in the preceding year. A ''high net worth individual'' is defined as any individual whose net worth exceeds $2 million, based on the fair market value of the individual's assets and liabilities immediately before entering into the transaction.

A public entity that is required to pay a penalty for failing to disclose a listed transaction (or is subject to an understatement penalty attributable to a non-disclosed listed transaction or a non-disclosed reportable avoidance transaction) must disclose the imposition of the penalty in reports to the Securities and Exchange Commission for such period as the Secretary shall specify. The bill applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and treats any failure to disclose a transaction in such reports

as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the Securities and Exchange Commission once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).

EFFECTIVE DATE

The bill is effective for returns and statements the due date for which is after the date of enactment.

2. Modifications to the accuracy-related penalties for listed transactions and reportable transactions having a significant tax avoidance purpose

(Sec. 802 of the bill and new Sec. 6662A of the Code)

PRESENT LAW

The accuracy-related penalty applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement. If the correct income tax liability exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 ($10,000 in the case of corporations), then a substantial understatement exists and a penalty may be imposed equal to 20 percent of the underpayment of tax attributable to the understatement. The amount of any understatement generally is reduced by any portion attributable to an item if (1) the treatment of the item is supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed and there was a reasonable basis for its tax treatment.

Special rules apply with respect to tax shelters. For understatements by non-corporate taxpayers attributable to tax shelters, the penalty may be avoided only if the taxpayer establishes that, in addition to having substantial authority for the position, the taxpayer reasonably believed that the treatment claimed was more likely than not the proper treatment of the item. This reduction in the penalty is unavailable to corporate tax shelters.

The understatement penalty generally is abated (even with respect to tax shelters) in cases in which the taxpayer can demonstrate that there was ''reasonable cause'' for the underpayment and that the taxpayer acted in good faith. The relevant regulations provide that reasonable cause exists where the taxpayer ''reasonably relies in good faith on an opinion based on a professional tax advisor's analysis of the pertinent facts and authorities [that] . . . unambiguously concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged'' by the IRS.

REASONS FOR CHANGE

Because the Treasury shelter initiative emphasizes combating abusive tax avoidance transactions by requiring increased disclosure of such transactions by all parties involved, the Committee believes that taxpayers should be subject to a strict liability penalty on an understatement of tax that is attributable to non-disclosed listed transactions or non-disclosed reportable transactions that have a significant purpose of tax avoidance. Furthermore, in order to deter taxpayers from entering into tax avoidance transactions, the Committee believes that a more meaningful (but less stringent) accuracy-related penalty should apply to such transactions even when disclosed.

EXPLANATION OF PROVISION

In general

The bill modifies the present-law accuracy related penalty by replacing the rules applicable to tax shelters with a new accuracy-related penalty that applies to listed transactions and reportable transactions with a significant tax avoidance purpose (hereinafter referred to as a ''reportable avoidance transaction''). The penalty rate and defenses available to avoid the penalty vary depending on whether the transaction was adequately disclosed.

Disclosed transactions

In general, a 20-percent accuracy-related penalty is imposed on any understatement attributable to an adequately disclosed listed transaction or reportable avoidance transaction. The only exception to the penalty is if the taxpayer satisfies a more stringent reasonable cause and good faith exception (hereinafter referred to as the ''strengthened reasonable cause exception''), which is described below. The strengthened reasonable cause exception is available only if the relevant facts affecting the tax treatment are adequately disclosed, there is or was substantial authority for the claimed tax treatment, and the taxpayer reasonably believed that the claimed tax treatment was more likely than not the proper treatment.

Undisclosed transactions

If the taxpayer does not adequately disclose the transaction, the strengthened reasonable cause exception is not available (i.e., a strict-liability penalty applies), and the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement.

In addition, a public entity that is required to pay the 30 percent penalty must disclose the imposition of the penalty in reports to the SEC for such periods as the Secretary shall specify. The disclosure to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the SEC once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).

Once the 30 percent penalty has been included in the Revenue Agent Report, the penalty cannot be compromised for purposes of a settlement without approval of the Commissioner personally or the head of the Office of Tax Shelter Analysis. Furthermore, the IRS is required to submit an annual report to Congress summarizing the application of this penalty and providing a description of each penalty compromised under this provision and the reasons for the compromise.

DETERMINATION OF THE UNDERSTATEMENT AMOUNT

The penalty is applied to the amount of any understatement attributable to the listed or reportable avoidance transaction without regard to other items on the tax return. For purposes of this bill, the amount of the understatement is determined as the sum of (1) the product of the highest corporate or individual tax rate (as appropriate) and the increase in taxable income resulting from the difference between the taxpayer's treatment of the item and the proper treatment of the item (without regard to other items on the tax return), and (2) the amount of any decrease in the aggregate amount of credits which results from a difference between the taxpayer's treatment of an item and the proper tax treatment of such item.

Except as provided in regulations, a taxpayer's treatment of an item shall not take into account any amendment or supplement to a return if the amendment or supplement is filed after the earlier of when the taxpayer is first contacted regarding an examination of the return or such other date as specified by the Secretary.

STRENGTHENED REASONABLE CAUSE EXCEPTION

A penalty is not imposed under the bill with respect to any portion of an understatement if it shown that there was reasonable cause for such portion and the taxpayer acted in good faith. Such a showing requires (1) adequate disclosure of the facts affecting the transaction in accordance with the regulations under section 6011, (2) that there is or was substantial authority for such treatment, and (3) that the taxpayer reasonably believed that such treatment was more likely than not the proper treatment. For this purpose, a taxpayer will be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief (1) is based on the facts and law that exist at the time the tax return (that includes the item) is filed, and (2) relates solely to the taxpayer's chances of success on the merits and does not take into account the possibility that (a) a return will not be audited, (b) the treatment will not be raised on audit, or (c) the treatment will be resolved through settlement if raised.

A taxpayer may (but is not required to) rely on an opinion of a tax advisor in establishing its reasonable belief with respect to the tax treatment of the item. However, a taxpayer may not rely on an opinion of a tax advisor for this purpose if the opinion (1) is provided by a ''disqualified tax advisor,'' or (2) is a ''disqualified opinion.''

Disqualified tax advisor

A disqualified tax advisor is any advisor who (1) is a material advisor and who participates in the organization, management, promotion or sale of the transaction or is related (within the meaning of section 267 or 707) to any person who so participates, (2) is compensated directly or indirectly by a material advisor with respect to the transaction, (3) has a fee arrangement with respect to the transaction that is contingent on all or part of the intended tax benefits from the transaction being sustained, or (4) as determined under regulations prescribed by the Secretary, has a continuing financial interest with respect to the transaction.

Organization, management, promotion or sale of a transaction.—A material advisor is considered as participating in the ''organization'' of a transaction if the advisor performs acts relating to the development of the transaction. This may include, for example, preparing documents (1) establishing a structure used in connection with the transaction (such as a partnership agreement), (2) describing the transaction (such as an offering memorandum or other statement describing the transaction), or (3) relating to the registration of the transaction with any federal, state or local government body. Participation in the ''management'' of a transaction means involvement in the decision-making process regarding any business activity with respect to the transaction. Participation in the ''promotion or sale'' of a transaction means involvement in the marketing or solicitation of the transaction to others. Thus, an advisor who provides information about the transaction to a potential participant is involved in the promotion or sale of a transaction, as is any advisor who recommends the transaction to a potential participant.

Disqualified opinion

An opinion may not be relied upon if the opinion (1) is based on unreasonable factual or legal assumptions (including assumptions as to future events), (2) unreasonably relies upon representations, statements, finding or

agreements of the taxpayer or any other person, (3) does not identify and consider all relevant facts, or (4) fails to meet any other requirement prescribed by the Secretary.

Coordination with other penalties

Any understatement upon which a penalty is imposed under this bill is not subject to the accuracy-related penalty under section 6662. However, such understatement is included for purposes of determining whether any understatement (as defined in sec. 6662(d)(2)) is a substantial understatement as defined under section 6662(d)(1).

The penalty imposed under this provision shall not apply to any portion of an understatement to which a fraud penalty is applied under section 6663.

EFFECTIVE DATE

The bill is effective for taxable years ending after the date of enactment.

3. Tax shelter exception to confidentiality privileges relating to taxpayer communications

(Sec. 803 of the bill and sec. 7525 of the Code)

PRESENT LAW

In general, a common law privilege of confidentiality exists for communications between an attorney and client with respect to the legal advice the attorney gives the client. The Code provides that, with respect to tax advice, the same common law protections of confidentiality that apply to a communication between a taxpayer and an attorney also apply to a communication between a taxpayer and a federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney. This rule is inapplicable to communications regarding corporate tax shelters.

REASONS FOR CHANGE

The Committee believes that the rule currently applicable to corporate tax shelters should be applied to all tax shelters, regardless of whether or not the participant is a corporation.

EXPLANATION OF PROVISION

The bill modifies the rule relating to corporate tax shelters by making it applicable to all tax shelters, whether entered into by corporations, individuals, partnerships, tax-exempt entities, or any other entity. Accordingly, communications with respect to tax shelters are not subject to the confidentiality provision of the Code that otherwise applies to a communication between a taxpayer and a federally authorized tax practitioner.

EFFECTIVE DATE

The bill is effective with respect to communications made on or after the date of enactment.

4. Disclosure of reportable transactions by material advisors

(Secs. 804 and 805 of the bill and secs. 6111 and 6707 of the Code)

PRESENT LAW

Registration of tax shelter arrangements

An organizer of a tax shelter is required to register the shelter with the Secretary not later than the day on which the shelter is first offered for sale. A ''tax shelter'' means any investment with respect to which the tax shelter ratio for any investor as of the close of any of the first five years ending after the investment is offered for sale may be greater than two to one and which is: (1) required to be registered under Federal or State securities laws, (2) sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State securities agency, or (3) a substantial investment (greater than $250,000 and at least five investors).

Other promoted arrangements are treated as tax shelters for purposes of the registration requirement if. (1) a significant purpose of the arrangement is the avoidance or evasion of Federal income tax by a corporate participant; (2) the arrangement is offered under conditions of confidentiality; and (3) the promoter may receive fees in excess of $100,000 in the aggregate.

In general, a transaction has a ''significant purpose of avoiding or evading Federal income tax'' if the transaction: (1) is the same as or substantially similar to a ''listed transaction,'' 101 or (2) is structured to produce tax benefits that constitute an important part of the intended results of the arrangement and the promoter reasonably expects to present the arrangement to more than one taxpayer. Certain exceptions are provided with respect to the second category of transactions.

An arrangement is offered under conditions of confidentiality if. (1) an offeree has an understanding or agreement to limit the disclosure of the transaction or any significant tax features of the transaction; or (2) the promoter knows, or has reason to know that the offeree's use or disclosure of information relating to the transaction is limited in any other manner.

Failure to register tax shelter

The penalty for failing to timely register a tax shelter (or for filing false or incomplete information with respect to the tax shelter registration) generally is the greater of one percent of the aggregate amount invested in the shelter or $500. However, if the tax shelter involves an arrangement offered to a corporation under conditions of confidentiality, the penalty is the greater of $10,000 or 50 percent of the fees payable to any promoter with respect to offerings prior to the date of late registration. Intentional disregard of the requirement to register increases the penalty to 75 percent of the applicable fees.

Section 6707 also imposes (1) a $100 penalty on the promoter for each failure to furnish the investor with the required tax shelter identification number, and (2) a $250 penalty on the investor for each failure to include the tax shelter identification number on a return.

REASONS FOR CHANGE

The Committee has been advised that the current promoter registration rules have not proven particularly effective, in part because the rules are not appropriate for the kinds of abusive transactions now prevalent, and because the limitations regarding confidential corporate arrangements have proven easy to circumvent.

The Committee believes that providing a single, clear definition regarding the types of transactions that must be disclosed by taxpayers and material advisors, coupled with more meaningful penalties for failing to disclose such transactions, are necessary tools if the effort to curb the use of abusive tax avoidance transactions is to be effective.

EXPLANATION OF PROVISION

Disclosure of reportable—transactions by material advisors

The bill repeals the present law rules with respect to registration of tax shelters. Instead, the bill requires each material advisor with respect to any reportable transaction (including any listed transaction) to timely file an information return with the Secretary (in such form and manner as the Secretary may prescribe). The return must be filed on such date as specified by the Secretary.

The information return will include (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. It is expected that the Secretary may seek from the material advisor the same type of information that the Secretary may request from a taxpayer in connection with a reportable transaction.

A ''material advisor'' means any person (1) who provides material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction, and (2) who directly or indirectly derives gross income in excess of $250,000 ($50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons) for such advice or assistance.

The Secretary may prescribe regulations which provide (1) that only one material advisor has to file an information return in cases in which two or more material advisors would otherwise be required to file information returns with respect to a particular reportable transaction, (2) exemptions from the requirements of this section, and (3) other rules as may be necessary or appropriate to carry out the purposes of this section (including, for example, rules regarding the aggregation of fees in appropriate circumstances).

Penalty for failing to furnish information regarding reportable transactions

The bill repeals the present law penalty for failure to register tax shelters. Instead, the bill imposes a penalty on any material advisor who fails to file an information return, or who files a false or incomplete information return, with respect to a reportable transaction (including a listed transaction). The amount of the penalty is $50,000. If the penalty is with respect to a listed transaction, the amount of the penalty is increased to the greater of (1) $200,000, or (2) 50 percent of the gross income of such person with respect to aid, assistance, or advice which is provided with respect to the transaction before the date the information return that includes the transaction is filed. Intentional disregard by a material advisor of the requirement to disclose a listed transaction increases the penalty to 75 percent of the gross income.

The penalty cannot be waived with respect to a listed transaction. As to reportable transactions, the penalty can be rescinded (or abated) only in exceptional circumstances. All or part of the penalty may be rescinded only if: (1) the material advisor on whom the penalty is imposed has a history of complying with the Federal tax laws, (2) it is shown that the violation is due to an unintentional mistake of fact, (3) imposing the penalty would be against equity and good conscience, and (4) rescinding the penalty would promote compliance with the tax laws and effective tax administration. The authority to rescind the penalty can only be exercised by the Commissioner personally or the head of the Office of Tax Shelter Analysis; this authority to rescind cannot otherwise be delegated by the Commissioner. Thus, the penalty cannot be rescinded by a revenue agent, an Appeals officer, or other IRS personnel. The decision to rescind a penalty must be accompanied by a record describing the facts and reasons for the action and the amount rescinded. There will be no right to appeal a refusal to rescind a penalty. The IRS also is required to submit an annual report to Congress summarizing the application of the disclosure penalties and providing a description of each penalty rescinded under this provision and the reasons for the rescission.

EFFECTIVE DATE

The provision requiring disclosure of reportable transactions by material advisors applies to transactions with respect to which material aid, assistance or advice is provided after the date of enactment.

The provision imposing a penalty for failing to disclose reportable transactions applies to returns the due date for which is after the date of enactment.

5. Investor lists and modification of penalty for failure to maintain investor lists
(Secs. 804 and 806 of the bill and secs. 6112 and 6708 of the Code)

PRESENT LAW

Investor lists

Any organizer or seller of a potentially abusive tax shelter must maintain a list identifying each person who was sold an interest in any such tax shelter with respect to which registration was required under section 6111 (even though the particular party may not have been subject to confidentiality restrictions). Recently issued regulations under section 6112 contain rules regarding the list maintenance requirements. In general, the regulations apply to transactions that are potentially abusive tax shelters entered into, or acquired after, February 28, 2003.

The regulations provide that a person is an organizer or seller of a potentially abusive tax shelter if the person is a material advisor with respect to that transaction. A material advisor is defined any person who is required to register the transaction under section 6111, or expects to receive a minimum fee of (1) $250,000 for a transaction that is a potentially abusive tax shelter if all participants are corporations, or (2) $50,000 for any other transaction that is a potentially abusive tax shelter. For listed transactions (as defined in the regulations under section 6011), the minimum fees are reduced to $25,000 and $10,000, respectively.

A potentially abusive tax shelter is any transaction that (1) is required to be registered under section 6111, (2) is a listed transaction (as defined under the regulations under section 6011), or (3) any transaction that a potential material advisor, at the time the transaction is entered into, knows is or reasonably expects will become a reportable transaction (as defined under the new regulations under section 6011).

The Secretary is required to prescribe regulations which provide that, in cases in which two or more persons are required to maintain the same list, only one person would be required to maintain the list.

Penalties for failing to maintain investor lists

Under section 6708, the penalty for failing to maintain the list required under section 6112 is $50 for each name omitted from the list (with a maximum penalty of $100,000 per year).

REASONS FOR CHANGE

The Committee has been advised that the present-law penalties for failure to maintain customer lists are not meaningful and that promoters often have refused to provide requested information to the IRS. The Committee believes that requiring material advisors to maintain a list of advisees with respect to each reportable transaction, coupled with more meaningful penalties for failing to maintain an investor list, are important tools in the ongoing efforts to curb the use of abusive tax avoidance transactions.

EXPLANATION OF PROVISION

Investor lists

Each material advisor with respect to a reportable transaction (including a listed transaction) is required to maintain a list that (1) identifies each person with respect to whom the advisor acted as a material advisor with respect to the reportable transaction, and (2) contains other information as may be required by the Secretary. In addition, the bill authorizes (but does not require) the Secretary to prescribe regulations which provide that, in cases in which 2 or more persons are required to maintain the same list, only one person would be required to maintain the list.

Penalty for failing to maintain investor lists

The bill modifies the penalty for failing to maintain the required list by making it a time-sensitive penalty. Thus, a material advisor who is required to maintain an investor list and who fails to make the list available upon written request by the Secretary within 20 business days after the request will be subject to a $10,000 per day penalty. The penalty applies to a person who fails to maintain a list, maintains an incomplete list, or has in fact maintained a list but does not make the list available to the Secretary. The penalty can be waived if the failure to make the list available is due to reasonable cause.

EFFECTIVE DATE

The provision requiring a material advisor to maintain an investor list applies to transactions with respect to which material aid, assistance or advice is provided after the date of enactment.

The provision imposing a penalty for failing to maintain investor lists applies to requests made after the date of enactment.

6. Penalties on promoters of tax shelters
(Sec. 807 of the bill and sec. 6700 of the Code)

PRESENT LAW

A penalty is imposed on any person who organizes, assists in the organization of, or participates in the sale of any interest in, a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, if in connection with such activity the person makes or furnishes a qualifying false or fraudulent statement or a gross valuation overstatement. A qualified false or fraudulent statement is any statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter. A ''gross valuation overstatement'' means any statement as to the value of any property or services if the stated value exceeds 200 percent of the correct valuation, and the value is directly related to the amount of any allowable income tax deduction or credit.

The amount of the penalty is $1,000 (or, if the person establishes that it is less, 100 percent of the gross income derived or to be derived by the person from such activity). A penalty attributable to a gross valuation misstatement can be waived on a showing that there was a reasonable basis for the valuation and it was made in good faith.

REASONS FOR CHANGE

The Committee believes that the present-law penalty rate is insufficient to deter the type of conduct that gives rise to the penalty.

EXPLANATION OF PROVISION

The bill modifies the penalty amount to equal 50 percent of the gross income derived by the person from the activity for which the penalty is imposed. The new penalty rate applies to any activity that involves a statement regarding the tax benefits of participating in a plan or arrangement if the person knows or has reason to know that such statement is false or fraudulent as to any material matter. The enhanced penalty does not apply to a gross valuation overstatement.

EFFECTIVE DATE

The bill is effective for activities after the date of enactment.

B. PROVISIONS TO DISCOURAGE CORPORATE EXPATRIATION

1. Tax treatment of inversion transactions
(Sec. 821 of the bill and new Sec. 7874 of the Code)

PRESENT LAW

Determination of corporate residence

The U.S. tax treatment of a multinational corporate group depends significantly on whether the top-tier ''parent'' corporation of the group is domestic or foreign. For purposes of U.S. tax law, a corporation is treated as domestic if it is incorporated under the law of the United States or of any State. All other corporations (i.e., those incorporated under the laws of foreign countries) are treated as foreign. Thus, place of incorporation determines whether a corporation is treated as domestic or foreign for purposes of U.S. tax law, irrespective of other factors that might be thought to bear on a corporation's ''nationality,'' such as the location of the corporation's management activities, employees, business assets, operations, or revenue sources, the exchanges on which the corporation's stock is traded, or the residence of the corporation's managers and shareholders.

U.S. taxation of domestic corporations

The United States employs a ''worldwide'' tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. In order to mitigate the double taxation that may arise from taxing the foreign-source income of a domestic corporation, a foreign tax credit for income taxes paid to foreign countries is provided to reduce or eliminate the U.S. tax owed on such income, subject to certain limitations.

Income earned by a domestic parent corporation from foreign operations conducted by foreign corporate subsidiaries generally is subject to U.S. tax when the income is distributed as a dividend to the domestic corporation. Until such repatriation, the U.S. tax on such income is generally deferred. However, certain anti-deferral regimes may cause the domestic parent corporation to be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by its foreign subsidiaries, regardless of whether the income has been distributed as a dividend to the domestic parent corporation. The main antideferral regimes in this context are the controlled foreign corporation rules of subpart F and the passive foreign investment company rules. A foreign tax credit is generally available to offset, in whole or in part, the U.S. tax owed on this foreign-source income, whether repatriated as an actual dividend or included under one of the anti-deferral regimes.

U.S. taxation of foreign corporations

The United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to U.S. tax only on income that is ''effectively connected'' with the conduct of a trade or business in the United States. Such ''effectively connected income'' generally is taxed in the same manner and at the same rates as the income of a U.S. corporation. An applicable tax treaty may limit the imposition of U.S. tax on business operations of a foreign corporation to cases in which the business is conducted through a ''permanent establishment'' in the United States.

In addition, foreign corporations generally are subject to a gross-basis U.S. tax at a flat 30–percent rate on the receipt of interest, dividends, rents, royalties, and certain similar types of income derived from U.S. sources, subject to certain exceptions. The tax generally is collected by means of withholding by the person making the payment. This tax may be reduced or eliminated under an applicable tax treaty.

U.S. tax treatment of inversion transactions

Under present law, U.S. corporations may reincorporate in foreign jurisdictions and thereby replace the U.S. parent corporation of a multinational corporate group with a foreign parent corporation. These transactions are commonly referred to as ''inversion'' transactions. Inversion transactions may take many different forms, including stock inversions, asset inversions, and various combinations of and variations on the two. Most of the known transactions to date have been stock inversions. In one example of a stock inversion, a U.S. corporation forms a foreign corporation, which in turn forms a domestic merger subsidiary. The domestic merger subsidiary then merges into the U.S. corporation, with the U.S. corporation surviving, now as a subsidiary of the new foreign corporation. The U.S. corporation's shareholders receive shares of the foreign corporation and are treated as having exchanged their U.S. corporation shares for the foreign corporation shares. An asset inversion reaches a similar result, but through a direct merger of the top-tier U.S. corporation into a new foreign corporation, among other possible forms. An inversion transaction may be accompanied or followed by further restructuring of the corporate group. For example, in the case of a stock inversion, in order to remove income from foreign operations from the U.S. taxing jurisdiction, the U.S. corporation may transfer some or all of its foreign subsidiaries directly to the new foreign parent corporation or other related foreign corporations.

In addition to removing foreign operations from the U.S. taxing jurisdiction, the corporate group may derive further advantage from the inverted structure by reducing U.S. tax on U.S.-source income through various ''earnings stripping'' or other transactions. This may include earnings stripping through payment by a U.S. corporation of deductible amounts such as interest, royalties, rents, or management service fees to the new foreign parent or other foreign affiliates. In this respect, the post-inversion structure enables the group to employ the same tax reduction strategies that are available to other multinational corporate groups with foreign parents and U.S. subsidiaries, subject to the same limitations. These limitations under present law include section 163(j), which limits the deductibility of certain interest paid to related parties, if the payor's debt-equity ratio exceeds 1.5 to 1 and the payor's net interest expense exceeds 50 percent of its ''adjusted taxable income.'' More generally, section 482 and the regulations thereunder require that all transactions between related parties be conducted on terms consistent with an ''arm's length'' standard, and permit the Secretary of the Treasury to reallocate income and deductions among such parties if that standard is not met.

Inversion transactions may give rise to immediate U.S. tax consequences at the shareholder and/or the corporate level, depending on the type of inversion. In stock inversions, the U.S. shareholders generally recognize gain (but not loss) under section 367(a), based on the difference between the fair market value of the foreign corporation shares received and the adjusted basis of the domestic corporation stock exchanged. To the extent that a corporation's share value has declined, and/or it has many foreign or tax-exempt shareholders, the impact of this section 367(a) ''toll charge'' is reduced. The transfer of foreign subsidiaries or other assets to the foreign parent corporation also may give rise to U.S. tax consequences at the corporate level (e.g., gain recognition and earnings and profits inclusions under sections 1001, 311(b), 304, 367, 1248 or other provisions). The tax on any income recognized as a result of these restructurings may be reduced or eliminated through the use of net operating losses, foreign tax credits, and other tax attributes.

In asset inversions, the U.S. corporation generally recognizes gain (but not loss) under section 367(a) as though it had sold all of its assets, but the shareholders generally do not recognize gain or loss, assuming the transaction meets the requirements of a reorganization under section 368.

REASONS FOR CHANGE

The Committee believes that inversion transactions resulting in a minimal presence in a foreign country of incorporation are a means of avoiding U.S. tax and should be curtailed. In particular, these transactions permit corporations and other entities to continue to conduct business in the same manner as they did prior to the inversion, but with the result that the inverted entity avoids U.S. tax on foreign operations and may engage in earnings-stripping techniques to avoid U.S. tax on domestic operations. The Committee believes that certain inversion transactions (involving 80 percent or greater identity of stock ownership) have little or no non-tax effect or purpose and should be disregarded for U.S. tax purposes. The Committee believes that other inversion transactions (involving greater than 50 but less than 80 percent identity of stock ownership) may have sufficient non-tax effect and purpose to be respected, but warrant heightened scrutiny and other restrictions to ensure that the U.S. tax base is not eroded through related-party transactions.

EXPLANATION OF PROVISION

In general

The provision defines two different types of corporate inversion transactions and establishes a different set of consequences for each type. Certain partnership transactions also are covered.

Transactions involving at least 80 percent identity of stock ownership

The first type of inversion is a transaction in which, pursuant to a plan or a series of related transactions: (1) a U.S. corporation becomes a subsidiary of a foreign-incorporated entity or otherwise transfers substantially all of its properties to such an entity; (2) the former shareholders of the U.S. corporation hold (by reason of holding stock in the U.S. corporation) 80 percent or more (by vote or value) of the stock of the foreign-incorporated entity after the transaction; and (3) the foreign-incorporated entity, considered together with all companies connected to it by a chain of greater than 50 percent ownership (i.e., the ''expanded affiliated group''), does not have substantial business activities in the entity's country of incorporation, compared to the total worldwide business activities of the expanded affiliated group. The provision denies the intended tax benefits of this type of inversion by deeming the top-tier foreign corporation to be a domestic corporation for all purposes of the Code.

Except as otherwise provided in regulations, the provision does not apply to a direct or indirect acquisition of the properties of a U.S. corporation no class of the stock of which was traded on an established securities market at any time within the four-year period preceding the acquisition. In determining whether a transaction would meet the definition of an inversion under the provision, stock held by members of the expanded affiliated group that includes the foreign incorporated entity is disregarded. For example, if the former top-tier U.S. corporation receives stock of the foreign incorporated entity (e.g., so-called ''hook'' stock), the stock would not be considered in determining whether the transaction meets the definition. Stock sold in a public offering (whether initial or secondary) or private placement related to the transaction also is disregarded for these purposes. Acquisitions with respect to a domestic corporation or partnership are deemed to be ''pursuant to a plan'' if they occur within the four-year period beginning on the date which is two years before the ownership threshold under the provision is met with respect to such corporation or partnership.

Transfers of properties or liabilities as part of a plan a principal purpose of which is to avoid the purposes of the provision are disregarded. In addition, the Treasury Secretary is granted authority to prevent the avoidance of the purposes of the provision, including avoidance through the use of related persons, pass-through or other noncorporate entities, or other intermediaries, and through transactions designed to qualify or disqualify a person as a related person, a member of an expanded affiliated group, or a publicly traded corporation. Similarly, the Treasury Secretary is granted authority to treat certain non-stock instruments as stock, and certain stock as not stock, where necessary to carry out the purposes of the provision.

Transactions involving greater than 50 percent but less than 80 percent identity of stock ownership

The second type of inversion is a transaction that would meet the definition of an inversion transaction described above, except that the 80-percent ownership threshold is not met. In such a case, if a greater-than-50-percent ownership threshold is met, then a second set of rules applies to the inversion. Under these rules, the inversion transaction is respected (i.e., the foreign corporation is treated as foreign), but: (1) any applicable corporate-level ''toll charges'' for establishing the inverted structure may not be offset by tax attributes such as net operating losses or foreign tax credits; (2) the IRS is given expanded authority to monitor related-party transactions that may be used to reduce U.S. tax on U.S.-source income going forward; and (3) section 163(j), relating to ''earnings stripping'' through related-party debt, is strengthened. These measures generally apply for a 10-year period following the inversion transaction. In addition, inverting entities are required to provide information to shareholders or partners and the IRS with respect to the inversion transaction.

With respect to ''toll charges,'' any applicable corporate-level income or gain required to be recognized under sections 304, 311(b), 367, 1001, 1248, or any other provision with respect to the transfer of controlled foreign corporation stock or other assets by a U.S. corporation as part of the inversion transaction or after such transaction to a related foreign person is taxable, without offset by any tax attributes (e.g., net operating losses or foreign tax credits). To the extent provided in regulations, this rule will not apply to certain transfers of inventory and similar transactions conducted in the ordinary course of the taxpayer's business.

In order to enhance IRS monitoring of related-party transactions, the provision establishes a new pre-filing procedure. Under this procedure, the taxpayer will be required

annually to submit an application to the IRS for an agreement that all return positions to be taken by the taxpayer with respect to related-party transactions comply with all relevant provisions of the Code, including sections 163(j), 267(a)(3), 482, and 845. The Treasury Secretary is given the authority to specify the form, content, and supporting information required for this application, as well as the timing for its submission.

The IRS will be required to take one of the following three actions within 90 days of receiving a complete application from a taxpayer: (1) conclude an agreement with the taxpayer that the return positions to be taken with respect to related-party transactions comply with all relevant provisions of the Code; (2) advise the taxpayer that the IRS is satisfied that the application was made in good faith and substantially complies with the requirements set forth by the Treasury Secretary for such an application, but that the IRS reserves substantive judgment as to the tax treatment of the relevant transactions pending the normal audit process; or (3) advise the taxpayer that the IRS has concluded that the application was not made in good faith or does not substantially comply with the requirements set forth by the Treasury Secretary.

In the case of a compliance failure described in (3) above (and in cases in which the taxpayer fails to submit an application), the following sanctions will apply for the taxable year for which the application was required: (1) no deductions or additions to basis or cost of goods sold for payments to foreign related parties will be permitted; (2) any transfers or licenses of intangible property to related foreign parties will be disregarded; and (3) any cost sharing arrangements will not be respected. In such a case, the taxpayer may seek direct review by the U.S. Tax Court of the IRS's determination of compliance failure.

If the IRS fails to act on the taxpayer's application within 90 days of receipt, then the taxpayer will be treated as having submitted in good faith an application that substantially complies with the above-referenced requirements. Thus, the deduction disallowance and other sanctions described above will not apply, but the IRS will be able to examine the transactions at issue under the normal audit process. The IRS is authorized to request that the taxpayer extend this 90-day deadline in cases in which the IRS believes that such an extension might help the parties to reach an agreement.

The ''earnings stripping'' rules of section 163(j), which deny or defer deductions for certain interest paid to foreign related parties, are strengthened for inverted corporations. With respect to such corporations, the provision eliminates the debt-equity threshold generally applicable under section 163(j) and reduces the 50-percent thresholds for ''excess interest expense'' and ''excess limitation'' to 25 percent.

In cases in which a U.S. corporate group acquires subsidiaries or other assets from an unrelated inverted corporate group, the provisions described above generally do not apply to the acquiring U.S. corporate group or its related parties (including the newly acquired subsidiaries or assets) by reason of acquiring the subsidiaries or assets that were connected with the inversion transaction. The Treasury Secretary is given authority to issue regulations appropriate to carry out the purposes of this provision and to prevent its abuse.

Partnership transactions

Under the proposal, both types of inversion transactions include certain partnership transactions. Specifically, both parts of the provision apply to transactions in which a foreign-incorporated entity acquires substantially all of the properties constituting a trade or business of a domestic partnership (whether or not publicly traded), if after the acquisition at least 80 percent (or more than 50 percent but less than 80 percent, as the case may be) of the stock of the entity is held by former partners of the partnership (by reason of holding their partnership interests), and the ''substantial business activities'' test is not met. For purposes of determining whether these tests are met, all partnerships that are under common control within the meaning of section 482 are treated as one partnership, except as provided otherwise in regulations. In addition, the modified ''toll charge'' provisions apply at the partner level.

EFFECTIVE DATE

The regime applicable to transactions involving at least 80 percent identity of ownership applies to inversion transactions completed after March 20, 2002. The rules for inversion transactions involving greater-than-50-percent identity of ownership apply to inversion transactions completed after 1996 that meet the 50-percent test and to inversion transactions completed after 1996 that would have met the 80-percent test but for the March 20, 2002 date.

2. Excise tax on stock compensation of insiders of inverted corporations

(Sec. 822 of the bill and new sec. 5000A and sec. 275(a) of the Code)

PRESENT LAW

The income taxation of a nonstatutory compensatory stock option is determined under the rules that apply to property transferred in connection with the performance of services (sec. 83). If a nonstatutory stock option does not have a readily ascertainable fair market value at the time of grant, which is generally the case unless the option is actively traded on an established market, no amount is included in the gross income of the recipient with respect to the option until the recipient exercises the option. Upon exercise of such an option, the excess of the fair market value of the stock purchased over the option price is included in the recipient's gross income as ordinary income in such taxable year.

The tax treatment of other forms of stock based compensation (e.g., restricted stock and stock appreciation rights) is also determined under section 83. The excess of the fair market value over the amount paid (if any) for such property is generally includable in gross income in the first taxable year in which the rights to the property are transferable or are not subject to substantial risk of forfeiture.

Shareholders are generally required to recognize gain upon stock inversion transactions. An inversion transaction is generally not a taxable event for holders of stock options and other stock based compensation.

REASONS FOR CHANGE

The Committee believes that certain inversion transactions are a means of avoiding U.S. tax and should be curtailed. The Committee is concerned that, while shareholders are generally required to recognize gain upon stock inversion transactions, executives holding stock options and certain stock-based compensation are not taxed upon such transactions. Since such executives are often instrumental in deciding whether to engage in inversion transactions, the Committee believes that, upon certain inversion transactions, it is appropriate to impose an excise tax on certain executives holding stock options and stock-based compensation.

EXPLANATION OF PROVISION

Under the provision, specified holders of stock options and other stock-based compensation are subject to an excise tax upon certain inversion transactions. The provision imposes a 20 percent excise tax on the value of specified stock compensation held (directly or indirectly) by or for the benefit of a disqualified individual, or a member of such individual's family, at any time during the 12–month period beginning six months before the corporation's inversion date. Specified stock compensation is treated as held for the benefit of a disqualified individual if such compensation is held by an entity, e.g., a partnership or trust, in which the individual, or a member of the individual's family, has an ownership interest.

A disqualified individual is any individual who, with respect to a corporation, is, at any time during the 12–month period beginning on the date which is six months before the inversion date, subject to the requirements of section 16(a) of the Securities and Exchange Act of 1934 with respect to the corporation, or any member of the corporation's expanded affiliated group, or would be subject to such requirements if the corporation (or member) were an issuer of equity securities referred to in section 16(a). Disqualified individuals generally include officers (as defined by section 16(a)) directors, and 10–percent owners of private and publicly-held corporations.

The excise tax is imposed on a disqualified individual of an inverted corporation only if gain (if any) is recognized in whole or part by any shareholder by reason of either the 80 percent or 50 percent identity of stock ownership corporate inversion transactions previously described in the provision.

Specified stock compensation subject to the excise tax includes any payment (or right to payment) granted by the inverted corporation (or any member of the corporation's expanded affiliated group) to any person in connection with the performance of services by a disqualified individual for such corporation (or member of the corporation's expanded affiliated group) if the value of the payment or right is based on, or determined by reference to, the value or change in value of stock of such corporation (or any member of the corporation's expanded affiliated group). In determining whether such compensation exists and valuing such compensation, all restrictions, other than non-lapse restrictions, are ignored. Thus, the excise tax applies, and the value subject to the tax is determined, without regard to whether such specified stock compensation is subject to a substantial risk of forfeiture or is exercisable at the time of the inversion transaction. Specified stock compensation includes compensatory stock and restricted stock grants, compensatory stock options, and other forms of stock based compensation, including stock appreciation rights, phantom stock, and phantom stock options. Specified stock compensation also includes nonqualified deferred compensation that is treated as though it were invested in stock or stock options of the inverting corporation (or member). For example, the provision applies to a disqualified individual's deferred compensation if company stock is one of the actual or deemed investment options under the nonqualified deferred compensation plan.

Specified stock compensation includes a compensation arrangement that gives the disqualified individual an economic stake substantially similar to that of a corporate shareholder. Thus, the excise tax does not apply where a payment is simply triggered by a target value of the corporation's stock or where a payment depends on a performance measure other than the value of the corporation's stock. Similarly, the tax does not apply if the amount of the payment is not directly measured by the value of the stock or an increase in the value of the

stock. For example, an arrangement under which a disqualified individual is paid a cash bonus of $500,000 if the corporation's stock increased in value by 25 percent over two years or $1,000,000 if the stock increased by 33 percent over two years is not specified stock compensation, even though the amount of the bonus generally is keyed to an increase in the value of the stock. By contrast, an arrangement under which a disqualified individual is paid a cash bonus equal to $10,000 for every $1 increase in the share price of the corporation's stock is subject to the provision because the direct connection between the compensation amount and the value of the corporation's stock gives the disqualified individual an economic stake substantially similar to that of a shareholder.

The excise tax applies to any such specified stock compensation previously granted to a disqualified individual but cancelled or cashed-out within the six-month period ending with the inversion transaction, and to any specified stock compensation awarded in the six-month period beginning with the inversion transaction. As a result, for example, if a corporation were to cancel outstanding options three months before the transaction and then reissue comparable options three months after the transaction, the tax applies both to the cancelled options and the newly granted options. It is intended that the Treasury Secretary issue guidance to avoid double counting with respect to specified stock compensation that is cancelled and then regranted during the applicable twelve-month period.

Specified stock compensation subject to the tax does not include a statutory stock option or any payment or right from a qualified retirement plan or annuity, a tax sheltered annuity, a simplified employee pension, or a simple retirement account. In addition, under the provision, the excise tax does not apply to any stock option that is exercised during the six-month period before the inversion or to any stock acquired pursuant to such exercise. The excise tax also does not apply to any specified stock compensation which is sold, exchanged, distributed or cashed-out during such period in a transaction in which gain or loss is recognized in full.

For specified stock compensation held on the inversion date, the amount of the tax is determined based on the value of the compensation on such date. The tax imposed on specified stock compensation cancelled during the six-month period before the inversion date is determined based on the value of the compensation on the day before such cancellation, while specified stock compensation granted after the inversion date is valued on the date granted. Under the provision, the cancellation of a nor-lapse restriction is treated as a grant.

The value of the specified stock compensation on which the excise tax is imposed is the fair value in the case of stock options (including warrants and other similar rights to acquire stock) and stock appreciation rights and the fair market value for all other forms of compensation. For purposes of the tax, the fair value of an option (or a warrant or other similar right to acquire stock) or a stock appreciation right is determined using an appropriate option-pricing model, as specified or permitted by the Treasury Secretary, that takes into account the stock price at the valuation date; the exercise price under the option; the remaining term of the option; the volatility of the underlying stock and the expected dividends on it; and the risk-free interest rate over the remaining term of the option. Options that have no intrinsic value (or ''spread'') because the exercise price under the option equals or exceeds the fair market value of the stock at valuation nevertheless have a fair value and are subject to tax under the provision. The value of other forms of compensation, such as phantom stock or restricted stock, are the fair market value of the stock as of the date of the inversion transaction. The value of any deferred compensation that could be valued by reference to stock is the amount that the disqualified individual would receive if the plan were to distribute all such deferred compensation in a single sum on the date of the inversion transaction (or the date of cancellation or grant, if applicable). It is expected that the Treasury Secretary issue guidance on valuation of specified stock compensation, including guidance similar to the revenue procedures issued under section 280G, except that the guidance would not permit the use of a term other than the full remaining term. Pending the issuance of guidance, it is intended that taxpayers could rely on the revenue procedures issued under section 280G (except that the full remaining term must be used).

The excise tax also applies to any payment by the inverted corporation or any member of the expanded affiliated group made to an individual, directly or indirectly, in respect of the tax. Whether a payment is made in respect of the tax is determined under all of the facts and circumstances. Any payment made to keep the individual in the same after-tax position that the individual would have been in had the tax not applied is a payment made in respect of the tax. This includes direct payments of the tax and payments to reimburse the individual for payment of the tax. It is expected that the Treasury Secretary issue guidance on determining when a payment is made in respect of the tax and that such guidance would include certain factors that give rise to a rebuttable presumption that a payment is made in respect of the tax, including a rebuttable presumption that if the payment is contingent on the inversion transaction, it is made in respect to the tax. Any payment made in respect of the tax is includible in the income of the individual, but is not deductible by the corporation.

To the extent that a disqualified individual is also a covered employee under section 162(m), the $1,000,000 limit on the deduction allowed for employee remuneration for such employee is reduced by the amount of any payment (including reimbursements) made in respect of the tax under the provision. As discussed above, this includes direct payments of the tax and payments to reimburse the individual for payment of the tax.

The payment of the excise tax has no effect on the subsequent tax treatment of any specified stock compensation. Thus, the payment of the tax has no effect on the individual's basis in any specified stock compensation and no effect on the tax treatment for the individual at the time of exercise of an option or payment of any specified stock compensation, or at the time of any lapse or forfeiture of such specified stock compensation. The payment of the tax is not deductible and has no effect on any deduction that might be allowed at the time of any future exercise or payment.

Under the provision, the Treasury Secretary is authorized to issue regulations as may be necessary or appropriate to carry out the purposes of the section.

EFFECTIVE DATE

The provision is effective as of July 11, 2002, except that periods before July 11, 2002, are not taken into account in applying the tax to specified stock compensation held or cancelled during the six-month period before the inversion date.

3. Reinsurance agreements
(Sec. 823 of the bill and sec. 845(a) of the Code)

PRESENT LAW

In the case of a reinsurance agreement between two or more related persons, present law provides the Treasury Secretary with authority to allocate among the parties or recharacterize income (whether investment income, premium or otherwise), deductions, assets, reserves, credits and any other items related to the reinsurance agreement, or make any other adjustment, in order to reflect the proper source and character of the items for each party. For this purpose, related persons are defined as in section 482. Thus, persons are related if they are organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) that are owned or controlled directly or indirectly by the same interests. The provision may apply to a contract even if one of the related parties is not a domestic company. In addition, the provision also permits such allocation, recharacterization, or other adjustments in a case in which one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to the agreement, or a conduit between related persons.

REASONS FOR CHANGE

The Committee is concerned that reinsurance transactions are being used to allocate income, deductions, or other items inappropriately among U.S. and foreign related persons. The Committee is concerned that foreign related party reinsurance arrangements may be a technique for eroding the U.S. tax base. The Committee believes that the provision of present law permitting the Treasury Secretary to allocate or recharacterize items related to a reinsurance agreement should be applied to prevent misallocation, improper characterization, or to make any other adjustment in the case of such reinsurance transactions between U.S. and foreign related persons (or agents or conduits). The Committee also wishes to clarify that, in applying the authority with respect to reinsurance agreements, the amount, source or character of the items may be allocated, recharacterized or adjusted.

EXPLANATION OF PROVISION

The provision clarifies the rules of section 845, relating to authority for the Treasury Secretary to allocate items among the parties to a reinsurance agreement, recharacterize items, or make any other adjustment, in order to reflect the proper source and character of the items for each party. The proposal authorizes such allocation, recharacterization, or other adjustment, in order to reflect the proper source, character or amount of the item. It is intended that this authority be exercised in a manner similar to the authority under section 482 for the Treasury Secretary to make adjustments between related parties. It is intended that this authority be applied in situations in which the related persons (or agents or conduits) are engaged in crossborder transactions that require allocation, recharacterization, or other adjustments in order to reflect the proper source, character or amount of the item or items. No inference is intended that present law does not provide this authority with respect to reinsurance agreements.

No regulations have been issued under section 845(a). It is expected that the Treasury Secretary will issue regulations under section 845(a) to address effectively the allocation of income (whether investment income, premium or otherwise) and other items, the recharacterization of such items, or any

other adjustment necessary to reflect the proper amount, source or character of the item.

EFFECTIVE DATE

The provision is effective for any risk reinsured after April 11, 2002.

C. EXTENSION OF IRS USER FEES

(Sec. 831 of the bill and new sec. 7529 of the Code)

PRESENT LAW

The IRS provides written responses to questions of individuals, corporations, and organizations relating to their tax status or the effects of particular transactions for tax purposes. The IRS generally charges a fee for requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. Public Law 104–117 extended the statutory authorization for these user fees through September 30, 2003.

REASONS FOR CHANGE

The Committee believes that it is appropriate to provide a further extension of these user fees.

EXPLANATION OF PROVISION

The bill extends the statutory authorization for these user fees through September 30, 2013. The bill also moves the statutory authorization for these fees into the Code.

EFFECTIVE DATE

The provision, including moving the statutory authorization for these fees into the Code and repealing the off-Code statutory authorization for these fees, is effective for requests made after the date of enactment.

D. ADD VACCINES AGAINST HEPATITIS A TO THE LIST OF TAXABLE VACCINES

(Sec. 842 of the bill and sec. 4132 of the Code)

PRESENT LAW

A manufacturer's excise tax is imposed at the rate of 75 cents per dose on the following vaccines routinely recommended for administration to children: diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, varicella (chicken pox), rotavirus gastroenteritis, and streptococcus pneumoniae. The tax applied to any vaccine that is a combination of vaccine components equals 75 cents times the number of components in the combined vaccine.

Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund to finance compensation awards under the Federal Vaccine Injury Compensation Program for individuals who suffer certain injuries following administration of the taxable vaccines. This program provides a substitute Federal, ''no fault'' insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers. All persons immunized after September 30, 1988, with covered vaccines must pursue compensation under this Federal program before bringing civil tort actions under State law.

REASONS FOR CHANGE

The Committee is aware that the Centers for Disease Control and Prevention have recommended that children in 17 highly endemic States be inoculated with a hepatitis A vaccine. The population of children in the affected States exceeds 20 million. Several of the affected States mandate childhood vaccination against hepatitis A. The Committee is aware that the Advisory Commission on Childhood Vaccines has recommended that the vaccine excise tax be extended to cover vaccines against hepatitis A. For these reasons, the Committee believes it is appropriate to include vaccines against hepatitis A as part of the Vaccine Injury Compensation Program. Making the hepatitis A vaccine taxable is a first step. In the unfortunate event of an injury related to this vaccine, families of injured children are eligible for the no-fault arbitration system established under the Vaccine Injury Compensation Program rather than going to Federal Court to seek compensatory redress.

EXPLANATION OF PROVISION

The bill adds any vaccine against hepatitis A to the list of taxable vaccines. The bill also makes a conforming amendment to the trust fund expenditure purposes.

EFFECTIVE DATE

The provision is effective for vaccines sold beginning on the first day of the first month beginning more than four weeks after the date of enactment.

E. INDIVIDUAL EXPATRIATION TO AVOID TAX

(Sec. 833 of the bill and secs. 877, 2107, 2501, and 6039 of the Code)

PRESENT LAW

U.S. citizens and residents generally are subject to U.S income taxation on their worldwide income. The U.S. tax may be reduced or offset by a credit allowed for foreign income taxes paid with respect to foreign source income. Nonresidents who are not U.S. citizens are taxed at a flat rate of 30 percent (or a lower treaty rate) on certain types of passive income derived from U.S. sources, and at regular graduated rates on net profits derived from a U.S. trade or business.

An individual who relinquishes his or her U.S. citizenship or terminates his or her U.S. residency with a principal purpose of avoiding U.S. taxes is subject to an alternative method of income taxation for the 10 taxable years ending after the citizenship relinquishment or residency termination (the ''alternative tax regime''). The alternative tax regime modifies the rules generally applicable to the taxation of nonresident noncitizens. For the 10-year period, the individual is subject to tax only on U.S.-source income at the rates applicable to U.S. citizens, rather than the rates applicable to nonresident noncitizens. However, for this purpose, U.S.-source income has a broader scope than it does for normal U.S. Federal tax purposes and includes, for example, gain from the sale of U.S. corporate stock or debt obligations. The alternative tax regime applies only if it results in a higher U.S. tax liability than the liability that would result if the individual were taxed as a nonresident noncitizen.

In addition, the alternative tax regime includes special estate and gift tax rules. Under present law, estates of nonresident noncitizens are subject to U.S. estate tax on U.S.-situated property. For these purposes, stock in a foreign corporation generally is not treated as U.S.-situated property, even if the foreign corporation itself owns U.S.-situated property. However, a special estate tax rule (sec. 2107) applies to former citizens and former long-term residents who are subject to the alternative tax regime. Under this rule, certain closely-held foreign stock owned by the former citizen or former long-term resident is includible in his or her gross estate to the extent that the foreign corporation owns U.S.-situated assets, if the former citizen or former long-term resident dies within 10 years of citizenship relinquishment or residency termination. This rule prevents former citizens and former long-term residents who are subject to the alternative tax regime from avoiding U.S. estate tax through the expedient of transferring U.S.-situated assets to a foreign corporation (subject to income tax on any appreciation under section 367). In addition, under the alternative tax regime, the individual is subject to gift tax on gifts of U.S.-situated intangibles, such as U.S. stock, made during the 10 years following citizenship relinquishment or residency termination.

Anti-abuse rules are, provided to prevent the circumvention of the alternative tax regime. Accordingly, the alternative tax regime generally applies to exchanges of property that give rise to U.S.-source income for property that gives rise to foreign source income. In addition, amounts earned by former citizens and former long-term residents through controlled foreign corporations are subject to the alternative tax regime, and the 10-year liability period is suspended during any time at which a former citizen's or former long-term resident's risk of loss with respect to property subject to the alternative tax regime is substantially diminished, among other measures.

A U.S. citizen who relinquishes citizenship or a long-term resident who terminates residency is treated as having done so with a principal purpose of tax avoidance (and, thus, generally is subject to the alternative tax regime described above) if: (1) the individual's average annual U.S. Federal income tax liability for the five taxable years preceding citizenship relinquishment or residency termination exceeds $100,000; or (2) the individual's net worth on the date of citizenship relinquishment or residency termination equals or exceeds $500,000. These amounts are adjusted annually for inflation. Certain categories of individuals may avoid being deemed to have a tax avoidance purpose for relinquishing citizenship or terminating residency by submitting a ruling request to the IRS regarding whether the individual relinquished citizenship or terminated residency principally for tax reasons.

Under present law, the Immigration and Nationality Act governs the determination of when a U.S. citizen is treated for U.S. Federal tax purposes as having relinquished citizenship. Similarly, an individual's U.S. residency is considered terminated for U.S. Federal tax purposes when the individual ceases to be a lawful permanent resident under the immigration law (or is treated as a resident of another country under a tax treaty and does not waive the benefits of such treaty). In view of this reliance on immigration-law status, it is possible in many instances for a U.S. citizen or resident to convert his or her Federal tax status to that of a nonresident noncitizen without notifying the IRS.

Individuals subject to the alternative tax regime are required to provide certain tax information, including tax identification numbers, upon relinquishment of citizenship or termination of residency (on IRS Form 8854, Expatriation Initial Information Statement). In the case of an individual with a net worth of at least $500,000, the individual also must provide detailed information about the individual's assets and liabilities. The penalty for the failure to provide the required tax information is the greater of $1,000 or five percent of the tax imposed under the alternative tax regime for the year. In addition, the U.S. Department of State and other governmental agencies are required to provide this information to the IRS.

Former citizens and former long-term residents who are subject to the alternative tax regime also are required to file annual income tax returns, but only in the event that they owe U.S. Federal income tax. If a tax return is required, the former citizen or former long-term resident is required to provide the IRS with a statement setting forth (generally by category) all items of U.S.-source and foreign-source gross income, but no detailed information with respect to all assets held by the individual.

REASONS FOR CHANGE

There are several difficulties in administering the present-law alternative tax regime. One such difficulty is that the IRS is

required to determine the subjective intent of taxpayers who relinquish citizenship or terminate residency. The present-law presumption of a tax avoidance purpose in cases in which objective income tax liability or net worth thresholds are exceeded mitigates this problem to some extent. However, the present-law rules still require the IRS to make subjective determinations of intent in cases involving taxpayers who fall below these thresholds, as well for certain taxpayers who exceed these thresholds but are nevertheless allowed to seek a ruling from the IRS to the effect that they did not have a principal purpose of tax avoidance. The Committee believes that the replacement of the subjective determination of tax avoidance as a principal purpose for citizenship relinquishment or residency termination with objective rules will result in easier administration of the tax regime for individuals who relinquish their citizenship or terminate residency.

Similarly, present-law information-reporting and return-filing provisions do not provide the IRS with the information necessary to administer the alternative tax regime. Although individuals are required to file tax information statements upon the relinquishment of their citizenship or termination of their residency, difficulties have been encountered in enforcing this requirement. The Committee believes that the tax benefits of citizenship relinquishment or residency termination should be denied an individual until he or she provides the information necessary for the IRS to enforce the alternative tax regime. The Committee also believes an annual report requirement and a penalty for the failure to comply with such requirement are needed to provide the IRS with sufficient information to monitor the compliance of former U.S. citizens and long-term residents.

Individuals who relinquish citizenship or terminate residency for tax reasons often do not want to fully sever their ties with the United States; they hope to retain some of the benefits of citizenship or residency without being subject to the U.S. tax system as a U.S. citizen or resident. These individuals generally may continue to spend significant amounts of time in the United States following citizenship relinquishment or residency termination—approximately four months every year—without being treated as a U.S. resident. The Committee believes that provisions in the bill that impose full U.S. taxation if the individual is present in the United States for more than 30 days in a calendar year will substantially reduce the incentives to relinquish citizenship or terminate residency for individuals who desire to maintain significant ties to the United States.

With respect to the estate and gift tax rules, the Committee is concerned that present-law does not adequately address opportunities for the avoidance of tax on the value of assets held by a foreign corporation whose stock the individual transfers. Thus, the provision imposes gift tax under the alternative tax regime in the case of gifts of certain stock of a closely held foreign corporation.

EXPLANATION OF PROVISION

In general

The provision provides: (1) objective standards for determining whether former citizens or former long-term residents are subject to the alternative tax regime; (2) tax based (instead of immigration-based) rules for determining when an individual is no longer a U.S. citizen or long term resident for U.S. Federal tax purposes; (3) the imposition of full U.S. taxation for individuals who are subject to the alternative tax regime and who return to the United States for extended periods; (4) imposition of U.S. gift tax on gifts of stock of certain closely-held foreign corporations that hold U.S.-situated property; and (5) an annual return-filing requirement for individuals who are subject to the alternative tax regime, for each of the 10 years following citizenship relinquishment or residency termination.

Objective rules for the alternative tax regime

The provision replaces the subjective determination of tax avoidance as a principal purpose for citizenship relinquishment or residency termination under present law with objective rules. Under the provision, a former citizen or former long-term resident would be subject to the alternative tax regime for a 10-year period following citizenship relinquishment or residency termination, unless the former citizen or former long-term resident: (1) establishes that his or her average annual net income tax liability for the five preceding years does not exceed $122,000 (adjusted for inflation) and his or her net worth does not exceed $2 million, or alternatively satisfies limited, objective exceptions for dual citizens and minors who have had no substantial contact with the United States; and (2) certifies under penalties of perjury that he or she has complied with all U.S. Federal tax obligations for the preceding five years and provides such evidence of compliance as the Secretary of the Treasury may require.

The monetary thresholds under the provision replace the present-law inquiry into the taxpayer's intent. In addition, the provision eliminates the present-law process of IRS ruling requests.

If a former citizen exceeds the monetary thresholds, that person is excluded from the alternative tax regime if he or she falls within the exceptions for certain dual citizens and minors (provided that the requirement of certification and proof of compliance with Federal tax obligations is met). These exceptions provide relief to individuals who have never had substantial connections with the United States, as measured by certain objective criteria, and eliminate IRS inquiries as to the subjective intent of such taxpayers.

In order to be excepted from the application of the alternative tax regime under the provision, whether by reason of falling below the net worth and income tax liability thresholds or qualifying for the dual-citizen or minor exceptions, the former citizen or former long-term resident also is required to certify, under penalties of perjury, that he or she has complied with all U.S. Federal tax obligations for the five years preceding the relinquishment of citizenship or termination of residency and to provide such documentation as the Secretary of the Treasury may require evidencing such compliance (e.g., tax returns, proof of tax payments). Until such time, the individual remains subject to the alternative tax regime. It is intended that the IRS should continue to verify that the information submitted was accurate, and it is intended that the IRS should randomly audit such persons to assess compliance.

Termination of U.S. citizen or long-term resident status for U.S. Federal income tax purposes

Under the provision, an individual continues to be treated as a U.S. citizen or long-term resident for U.S. Federal tax purposes, including for purposes of section 7701(b)(10), until the individual: (1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, respectively; and (2) provides a statement in accordance with section 6039G.

Sanction for individuals subject to the individual tax regime who return to the United States for extended periods

The alternative tax regime does not apply to any individual for any taxable year during the 10-year period following citizenship relinquishment or residency termination if such individual is present in the United States for more than 30 days in the calendar year ending in such taxable year. Such individual is treated as a U.S. citizen or resident for such taxable year.

Similarly, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any calendar year ending during the 10-year period following citizenship relinquishment or residency termination, and the individual dies during that year, he or she is treated as a U.S. resident, and the individual's worldwide estate is subject to U.S. estate tax. Likewise, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any year during the 10-year period following citizenship relinquishment or residency termination, the individual is subject to U.S. gift tax on any transfer of his or her worldwide assets by gift during that taxable year.

For purposes of these rules, an individual is treated as present in the United States on any day if such individual is physically present in the United States at any time during that day, with no exceptions. The present-law exceptions from being treated as present in the United States for residency purposes do not apply for this purpose.

Imposition of gift tax with respect to stock of certain closely held foreign corporations

Gifts of stock of certain closely-held foreign corporations by a former citizen or former long-term resident who is subject to the alternative tax regime are subject to gift tax under this provision, if the gift is made within the 10-year period after citizenship relinquishment or residency termination. The gift tax rule applies if: (1) the former citizen or former long-term resident, before making the gift, directly or indirectly owns 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation; and (2) directly or indirectly, is considered to own more than 50 percent of (a) the total combined voting power of all classes of stock entitled to vote in the foreign corporation, or (b) the total value of the stock of such corporation. If this stock ownership test is met, then taxable gifts of the former citizen or former long-term resident include that proportion of the fair market value of the foreign stock transferred by the individual, at the time of the gift, which the fair market value of any assets owned by such foreign corporation and situated in the United States (at the time of gift) bears to the total fair market value of all assets owned by such foreign corporation (at the time of gift).

This gift tax rule applies to a former citizen or former long-term resident who is subject to the alternative tax regime and who owns stock in a foreign corporation at the time of the gift, regardless of how such stock was acquired (e.g., whether issued originally to the donor, purchased, or received as a gift or bequest).

Annual return

The provision requires former citizens and former long-term residents to file an annual return for each year following citizenship relinquishment or residency termination in which they are subject to the alternative tax regime. The annual return is required even if no U.S. Federal income tax is due. The annual return requires certain information, including information on the permanent home

of the individual, the individual's country of residency, the number of days the individual was present in the United States for the year, and detailed information about the individual's income and assets that are subject to the alternative tax regime. This requirement includes information relating to foreign stock potentially subject to the special estate tax rule of section 2107(b) and the gift tax rules of this provision.

If the individual fails to file the statement in a timely manner or fails correctly to include all the required information, the individual is required to pay a penalty of $5,000. The $5,000 penalty does not apply if it is shown that the failure is due to reasonable cause and not to willful neglect.

EFFECTIVE DATE

The provisions apply to individuals who relinquish citizenship or terminate long-term residency after February 27, 2003.

II. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the revenue provisions of the ''Energy Tax Incentives Act of 2003'' as reported.

B. BUDGET AUTHORITY AND TAX EXPENDITURES

Budget authority

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the revenue provisions of the bill as reported involve no new or increased budget authority.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act, the Committee states that the revenue-reducing provisions of the bill involve increased tax expenditures (see revenue table in Part III. A., above).

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office submitted the following statement on this bill:

III. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of Rule XXVI of the standing rules of the Senate, the following statements are made concerning the roll call votes in the Committee's consideration of the ''Energy Tax Incentives Act of 2003.''

Motion to report the Bill

An original bill, the ''Energy Tax Incentives Act of 2003,'' was ordered favorably reported, by a record vote on April 2, 2003.

Yeas.—Senators Grassley, Hatch, Lott, Snowe, Thomas, Santorum (proxy), Frist (proxy), Smith, Bunning, Baucus, Rockefeller (proxy), Daschle (proxy), Breaux, Conrad (proxy), Jeffords (proxy), Bingaman (proxy), Kerry (proxy), Lincoln.

Nays.—Senators Nickles, Kyl.

Votes on other amendments

The Committee accepted an amendment by Senator Bingaman to expand the research credit to 100 percent of expenses for energy related research by universities and 20 percent for payments to research consortiums for energy research. The Committee rejected a motion by Senators Baucus and Graham, to extend Superfund taxes, by record vote.

Yeas.—Senators Snowe, Baucus, Rockefeller, Daschle, Conrad, Graham (proxy), Jeffords, Bingaman, Kerry (proxy).

Nays.—Senators Grassley, Hatch, Nickles, Lott, Kyl, Thomas, Santorum, Frist (proxy), Smith, Bunning, Breaux, Lincoln.

The Committee rejected a motion by Senators Baucus, Rockefeller, Daschle, Breaux, Conrad, Graham, Jeffords, Bingaman, Kerry and Lincoln regarding tax shelter transparency and enforcement, by record vote.

Yeas.—Baucus, Rockefeller, Daschle, Breaux, Conrad, Graham (proxy), Jeffords, Bingaman, Kerry (proxy), Lincoln.

Nays.—Senators Grassley, Hatch, Nickles, Lott, Snowe, Kyl, Thomas, Santorum, Frist (proxy), Smith, Bunning.

The Committee rejected a modified amendment by Senator Jeffords, regarding the motor fuel excise tax on diesel fuel used by railroads, by record vote.

Yeas.—Baucus, Rockefeller (proxy), Jeffords, Kerry (proxy).

Nays.—Grassley, Hatch (proxy), Nickles, Lott, Snowe, Kyl, Thomas, Santorum (proxy), Frist (proxy), Smith, Bunning, Daschle, Breaux, Conrad, Bingaman, Lincoln.

The Committee accepted an amendment by Senator Lott regarding the immediate repeal of 4.3 cents tax on diesel used by rails and barges, by voice vote.

The Committee accepted an amendment by Senator Conrad to provide credit for business installations of stationary microturbine power plants. (Senator Kyl objected.)

The Committee rejected an amendment by Senator Nickles to strike section 29 of the Chairman's mark, by roll call vote.

Ayes.—Senators Nickles, Lott, Kyl, Bunning.

Nays.—Senators Grassley, Hatch (proxy), Snowe, Thomas, Santorum (proxy), Frist (proxy), Smith, Baucus, Rockefeller (proxy), Daschle (proxy), Breaux, Conrad (proxy), Graham (proxy), Jeffords (proxy), Bingaman (proxy), Kerry (proxy), Lincoln.

The Committee accepted an amendment by Senator Lincoln to modify section 29 of the Internal Revenue Code with respect to the definition of a landfill gas facility and to modify section 45 of the Internal Revenue Code for the production of electricity to include electricity produced from facilities that burn municipal solid waste. The amendment was modified to include the President's Budget Proposal of definition change for landfill gas placed in service date and to amend the extension of Internal Revenue Service user fees.

IV. REGULATORY IMPACT AND OTHER MATTERS

A. REGULATORY IMPACT

Pursuant to paragraph 11 (b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill as amended.

Impact on individuals and businesses

With respect to individuals and businesses, the bill modifies the rules relating to (1) tax benefits for alternative fuels; (2) coal production; (3) oil and gas production; (4) energy conservation; and (5) electric industry participants involved in industry restructuring activities. Taxpayers may elect whether to avail themselves of the provisions of the bill. Thus, the provisions do not impose increased regulatory burdens on individuals or businesses. Certain provisions of the bill, such as the provision relating to transfers of decommissioning funds associated with nuclear generating facilities, simplify the present-law rules and, therefore, reduce burdens on taxpayers electing to utilize the provision. Thus, the bill does not impose increased regulatory burdens on individuals and businesses.

Impact on personal privacy and paperwork

The provisions of the bill do not impact personal privacy. Individuals may elect whether to avail themselves of the provisions of the bill. Thus, the bill does not impose increased paperwork burdens on individuals. Individuals who elect to take advantage of the bill may in some cases need to keep records in order to demonstrate that they qualify for the tax treatment provided by the bill. In some cases the bill simplifies present law, thus reducing recordkeeping requirements.

B. UNFUNDED MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4).

The Committee has determined that four of the revenue provisions of the bill impose Federal mandates on the private sector. The four provisions are (1) the provisions to curtail tax shelters; (2) tax treatment of corporate inversion transactions; (3) the excise tax on stock compensation of insiders of inverted corporations; and (4) the revisions to the alternative tax regime for individuals who expatriate. The Committee has determined that the remaining revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

C. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the ''IRS Reform Act'') requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the ''Code'') and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have ''widespread applicability'' to individuals or small businesses.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

Mr. BAUCUS. Mr. President, I yield the floor.

Mr. GRASSLEY. Mr. President, last night, Senator BAUCUS and I, along with Chairman DOMENICI and Senator BINGAMAN introduced the Energy Tax Incentives Act of 2003 as an amendment to the underlying energy bill. We also submitted an amendment that contains technical and conforming modifications to the Finance Committee reported amendment. Those amendments are numbered 1424 and 1431 and are printed in the RECORD of Wednesday, July 30, 2003. These important tax initiatives were developed after several months of consultation between our Committee members, and voted out of the Finance Committee as a bipartisan product. In my estimation, the Energy Tax Incentives Act reflects a fair balance of the interests of the members and effectively supports the development of energy production from renewable and environmentally beneficial sources.

I would like to briefly describe that amendment before I talk about the tax incentives part of the energy bill.

For years, I have worked to decrease our reliance on foreign sources of energy and accelerate and diversify domestic energy production. I believe public policy ought to promote renewable domestic production that uses renewable energy and fosters economic development.

Specifically, the development of alternative energy sources should alleviate domestic energy shortages and insulate the United States from the Middle East dominated oil supply. In addition, the development of renewable energy resources conserves existing natural resources and protects the environment. Finally, alternative energy development provides economic benefits to farmers, ranchers and forest land owners, such as those in Iowa who have launched efforts to diversify the state's economy and to find creative ways to extract a greater return from abundant natural resources.

Section 45 of the Internal Revenue Code currently provides a production tax credit for electricity produced from renewable sources including wind, closed-loop biomass, and poultry waste. The Energy Tax Incentives Act extends the section 45 credit and expands the sources of electricity to include biomass, including agricultural waste nutrients, geothermal wells and solar energy.

I have been a constant advocate of alternative energy sources. Since the inception almost ten years ago of the wind energy tax credit, nearly 4,300 megawatts of generating capacity have been installed across the country. Forty percent of that capacity was added during 2001, a year in which wind energy installations increased 3000% over the prior year—the most new wind capacity ever installed in the United States. Wind farms installed last year produce enough electricity to power almost half a million average American households per year, demonstrating the significant capacity of wind. In addition, wind represents an affordable and inexhaustible source of domestically produced energy. Extending the wind energy tax credit until 2007 would support the tremendous continued development of this clean, renewable energy source.

The Finance Committee's amendment supports a maturing green energy source. Experts have established wind energy's valuable contributions to maintaining cleaner air and a cleaner environment. Every 10,000 megawatts of wind energy produced in the United States can reduce carbon monoxide emissions by 33 million metric tons by replacing the combustion of fossil fuels.

In addition, this proposal helps to empower our rural communities to reap continued economic benefits. The installation of wind turbines has a stimulative economic effect because it requires significant capital investment which results in the creation of jobs and the injection of capital into often rural economic areas. The wind industry now estimates that nearly $2 billion in employment and economic development will be added this year alone in the presence of the prompt extension of the credit through January 1, 2007

In addition, for each wind turbine, a farmer or rancher can receive more than $2,000 per year for 20 years in direct lease payments. Iowa's major wind farms currently pay more than $640,000 per year to land owners, and the development of 1,000 megawatts of capacity in California, for example, would result in annual payments of approximately $2 million to farm and forest landowners in that state.

As many of my colleagues know, I authored the section 45 tax credit included in the Energy Policy Act of 1992 which provided a tax credit for the production of energy from closed loop biomass.

This term refers to biomass produced specifically for energy production. An example is switchgrass grown in my home state of Iowa. To sustain many of the benefits derived from the production of biomass energy, we extend the existing credit and expand the provision to additional new sources of biomass energy production.

Environmentally-friendly biomass energy production is a proven, effective technology that generates numerous waste management public benefits across the country.

Moreover, the amendment expands the biomass definition to cover open loop biomass. Open loop biomass, includes organic, non-hazardous materials such as saw dust, tree trimmings, agricultural byproducts and untreated construction debris.

The development of a local industry to convert biomass to electricity has the potential to produce enormous economic benefits and electricity security for rural America.

In addition, studies show that biomass crops could produce between $2 and $5 billion in additional farm income for American farmers. As an example, over 450 tons of turkey and chicken litter are under contract to be sold for an electricity plant using poultry litter being built in Minnesota. This is a win-win, not only do the farmers not have to pay to dispose of this stuff, they get paid to sell the litter.

Finally, marginal farmland incapable of sustaining traditional yearly production is often capable of generating native grasses and organic materials that are ideal for biomass energy production. Turning tree trimmings and native grasses into energy provides an economic gain and serves an important public interest.

I am very proud of a long history of supporting new alternative energy concepts in the production of electricity. This amendment continues and expands that commitment. As discussed previously, section 45 provides a production tax credit for electricity produced from renewable sources including wind, closed-loop biomass, and poultry waste. The amendment modifies section 45 to include electricity generated from swine and bovine waste nutrient. This is a great example of how the agriculture and energy industries can come together to develop an environmentally-friendly renewable resource.

By using animal waste as an energy source, an American livestock producer can reduce or eliminate monthly energy purchases from electric and gas suppliers and provide excess energy for distribution to other members of the community. By way of example, in January 2001, an 850-cow dairy operation near Princeton, MN generated enough electricity to run its entire dairy farm and to sell $4,400 worth of excess power to the local electric provider—enough to power 78 homes during the coldest month of the year. In addition, a 5,000-hog farm, has potential to generate approximately 650,000 kilowatts of electricity—an amount equal to the consumption of 76 average American homes.

The swine and bovine proposal is truly Green electricity, as it also furthers environmental objectives. Specifically, anaerobic digestion of manure improves air quality because it eliminates of as much as 90 percent of the odor from feedlots and improves soil and water quality by dramatically reducing problems with waste run-off. Maximizing farm resources in such a manner may prove essential to remain competitive in today's livestock market. In addition, the technology used to create the electricity results in the production of a fertilizer product that is of a higher quality than unprocessed animal waste.

The Energy Tax Incentives Act is important to agriculture, rural economy and small business, it is also important for domestic supply and energy independence.

Rural America can play an important part in energy independence and domestic supply. In addition to the production of electricity, this amendment includes additional tax incentives for the production of alternative fuels from renewable resources.

A small producers credit for the production of ethanol has been included to clarify that farmers cooperatives producing ethanol will be able to pass that tax incentive through to their farmer members. And we have a new incentive for the production of biodiesel. Biodiesel is a natural substitute for diesel fuel and can be made from almost all vegetable oils and animal fats. Modern science is allowing us to slowly substitute natural renewable agricultural sources for traditional petroleum. It gives us choices for the future and it can relieve the strain on the domestic oil production to fulfill those important needs that agricultural products cannot serve.

Let me point out that the Finance Committee amendment contains provisions that enhance the tax incentives for ethanol production. Ethanol is a clean burning fuel that will continue to be a key element in our transportation fuels policy. We reshaped the ethanol excise tax exemption. Under the Finance Committee change, ethanol-blended fuels will make the same contribution to the highway trust fund as regular gasoline while also retaining an important incentive to promote the use of domestic, renewable fuels.

It makes common sense for ethanol taxes to contribute just as much to building highways as traditional gasoline taxes. It isn't logical for a smaller portion of ethanol taxes to contribute to highways than the taxes from traditional gasoline. All types of vehicle fuel taxes should contribute equally to highway construction and maintenance.

Our highway needs are great. Our dependence on imported fuel should decrease. This restructuring of ethanol excise taxes contributes to both of those priorities. At the same time, it preserves all incentives to use the clean-burning, renewable, domestically produced ethanol, the fuel of the future.

Renewable fuels like ethanol and biodiesel will improve air quality, strengthen national security, reduce the trade deficit, decrease dependence on the Middle East for oil, and expand markets for agricultural products.

The Energy Tax Incentives Act amendment is a balanced package. I would like to note, with some satisfaction, that today we have the opportunity to do the people's business in the way they want us to do business. This Energy Tax Incentive amendment was crafted in a bipartisan way on an important initiative in a way that reflects the diversity of our views and the diversity of our nation. In this wartime climate, this is what the people want.

I have only taken a few minutes to review a portion of the amendment. The electricity tax credits and the alternative fuel incentives in the amendment are good for agriculture, good for the environment, good for energy consumers and good for national security interests. But this entire tax incentive amendment is equally important to a sound energy policy and I hope that my colleagues will join with me to advance these important legislative objectives.

Let me turn to the peculiar procedural situation that we find ourselves in. I want to enter conference with a clear understanding of the bipartisan intent of the Senate.

Today, the Senate will pass the text of last year's energy bill. Read literally, the unanimous consent agreement, states that the text of last year's Finance Committee amendment, which was adopted unanimously at the time, passes the Senate.

Folks in my home state of Iowa or my friend, Senator BAUCUS' home State of Montana, might reasonably ask a question. That question would be if you have improved the Finance Committee amendment from last year's bill, why not last year's tax title with this year's tax title? That's a good question. That was my position and that of Senator BAUCUS.

From a technical standpoint, you'd have to scratch your head, looking at effective dates for a bill that is now over a year old. There are other details in the official Senate-passed bill that will appear odd simply because the text has not been updated in over a year.

The answer to the question is simple. The answer is that this procedural agreement would not hold together unless last year's bill text stayed exactly the same. That reflects the agreement of the leaders on both sides. It has nothing to do with the substance of this year's Finance Committee amendment which is non-controversial. It has to do with the all or nothing, simplistic nature of the offer made by Senators DASCHLE and REID. The problem is that, if tax matters are opened up, no matter how non-controversial, then other matters would be open. In that situation, then the agreement of the leaders could not be consummated expeditiously.

Our majority leader, Senator FRIST, assured me that the position of the Senate Republican Caucus would be this year's Finance Committee amendment. As the senior Finance Committee conferee, let me assure the Senate, that will be our conference position. Just as importantly, let me make sure the other body understands the letter and spirit of our position. Let me repeat that, loudly and clearly.

The Senate position for conference purposes will be this year's Finance Committee amendment. Everyone here knows, that in regular order, this year's Finance Committee would have been adopted by the Senate. That is the substantive position and the intellectually honest position. I expect my House counterparts to recognize and respect that intellectually honest position.

Before I finish I would like to comment on a few tax incentive proposals I intended to offer to the Finance Committee amendment. Because of the procedural situation we are in, these matters will not be in the Senate-passed bill. That is unfortunate, but, if we are to get a bill out of the Senate, these proposals became casualties for the cause.

The first proposal deals with dividend allocation rules for cooperatives. This proposal would allow the payments of dividends on the stock of cooperatives without reducing patronage dividends. This measure is very important for energy production and agriculture and, I expect, would have easily cleared the Senate.

The second proposal deals with an expansion of the qualified zone academy bond program to cover certain ''green'' teaching facilities recognized by the Department of Energy. This is an important matter for one such facility in my home State of Iowa. Like the first proposal, I expect this provision would have easily cleared the Senate.

The third proposal deals with publicly-traded partnerships. This proposal would permit mutual funds to acquire interests in publicly-traded partnerships. Publicly-traded partnerships are a key source of financing for energy production projects such as pipelines.

I regret the procedural situation we find ourselves in. Unfortunately, these important priorities will not be directly addressed in the Senate bill. I intend to raise them in conference in the spirit of this bill. If not successful, I will pursue them on future tax vehicles.

ENERGY POLICY ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, what is the regular order?

The PRESIDING OFFICER. There is an order to proceed to the House Energy bill and substitute last year's Senate language.

Mr. LOTT. Mr. President, are we ready to proceed?

The PRESIDING OFFICER. The Senate is ready to proceed.

Mr. LOTT. Reluctantly and temporarily, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I believe we are ready to proceed to the regular order.

The PRESIDING OFFICER. The clerk will report H.R. 6.

The legislative clerk read as follows:

A bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the text of the Senate amendment to H.R. 4 from the 107th Congress is inserted in lieu of the House language.

The amendment (No. 1537) is printed in today's RECORD under ''Text of Amendments.''

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

Mr. CRAIG. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not been ordered.

Mr. CRAIG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that if present and voting, the Senator from Massachusetts (Mr. KERRY), would vote ''nay.''

The PRESIDING OFFICER (Mr. TALENT). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 84, nays 14, as follows:

[Rollcall Vote No. 317 Leg.]

YEAS—84

Akaka	Dayton	Levin
Alexander	DeWine	Lincoln
Allard	Dodd	Lott
Allen	Dole	Lugar
Baucus	Domenici	McConnell
Bayh	Dorgan	Mikulski
Bennett	Durbin	Miller
Biden	Edwards	Murkowski
Bingaman	Ensign	Nelson (FL)
Bond	Enzi	Nelson (NE)
Breaux	Fitzgerald	Nickles
Brownback	Frist	Pryor
Bunning	Graham (FL)	Reid
Burns	Graham (SC)	Roberts
Byrd	Grassley	Rockefeller
Campbell	Gregg	Santorum
Carper	Hagel	Sarbanes
Chafee	Harkin	Sessions
Chambliss	Hatch	Shelby
Cochran	Hollings	Smith
Coleman	Hutchison	Snowe
Collins	Inhofe	Specter
Conrad	Inouye	Stabenow
Cornyn	Jeffords	Stevens
Corzine	Johnson	Talent
Craig	Kohl	Thomas
Crapo	Landrieu	Voinovich
Daschle	Leahy	Warner

NAYS—14

Boxer	Kennedy	Reed
Cantwell	Kyl	Schumer
Clinton	Lautenberg	Sununu
Feingold	McCain	Wyden
Feinstein	Murray	

NOT VOTING—2

Kerry	Lieberman

The bill (H.R. 6), as amended, was passed.

Mr. DASCHLE. Mr. President, I move to reconsider the vote.

Mr. FRIST. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment, requests a conference with the House on the disagreeing votes of the two Houses, and the Chair is authorized to appoint conferees on the part of the Senate in a ratio of 7 to 6.

COLLOQUOY ON AMENDMENT 1473

Mr. SMITH. Mr. President, today I have joined with my colleague from Alaska to sponsor an amendment to S.14, the Energy bill, which would strengthen the commitment of the United States to supply oil to Israel and other nations pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

The United States is currently party to two agreements to ensure that in the event Israel was unable to independently acquire its own supply of oil, the United States Government would procure the necessary oil to meet Israel's needs.

Ms. MURKOWSKI. Mr. President, this amendment would make both agreements part of the United States law, rather than subject to continued renewal agreements. Further, the amendment also authorizes the President to export oil to, or secure oil for, Israel pursuant to these agreements, or to any country that is part of the International Emergency Oil Sharing Plan.

This language also ensures that should legislation reinstating a ban on the exportation of domestic oil be implemented in the future, the United States would still be able to meet its obligations to Israel.

Mr. SMITH. I believe it is important to ensure that the United States can fulfill its commitment to this vital ally. I want to clarify, however, that nothing in this language would authorize the President to permit oil exploration and drilling in areas currently not legally open to development. Is that also your understanding of the language?

Ms. MURKOWSKI. That is correct. No areas where drilling is prohibited could be developed under this language.

Mr. SMITH. I thank my colleague for that clarification.

LANDFILL GAS TAX CREDITS

Mrs. LINCOLN. Mr. President, I want to congratulate Chairman GRASSLEY and Ranking Member BAUCUS on this package of energy tax incentives. But also I would like to raise two concerns with the bill, which I request they address in the House-Senate conference on the energy bill.

On February 11 of this year, I introduced S. 358, the Capturing Landfill Gas for Energy Act of 2003. My bill is cosponsored by Senators SANTORUM and HATCH and would provide a credit under either Section 29 or 45 of the Tax Code for the production of energy from landfill gas, or LFG.

In the past, Congress has recognized the importance of LFG for energy diversity and national security by providing a Section 29 credit in 1980 and extending it for nearly two decades. However, the bill before us provides no Section 45 credit for LFG, and it severely limits the Section 29 credit by applying a volume cap of 200,000 cubic feet per day. In contrast, the President proposed a Section 29 credit for LFG with no volume cap, and the House has passed a Section 45 credit for LFG. Both of these proposals would provide meaningful tax incentives to encourage the collection and use of LFG. Thus, the Senate bill falls well short of recognizing the importance of dealing with LFG, and I urge the Chairman to address this shortfall in the House-Senate conference.

My second concern deals with a provision included in the Senate energy tax bill which would clarify the definition of ''landfill gas facility'' for purposes of Section 29. I am grateful to have worked with the chairman and ranking member of this provision, but I am concerned that we have not yet found the proper solution.

Typically, a landfill is comprised of a number of ''cells.'' A cell is filled with trash, closed up, and then a new cell is filled. Over time, cells within the landfill begin to generate methane gas as the garbage decomposes. So a landfill produces methane gas in stages as the individual cells produce LFG, and new ''wells, pipes, and related components'' are run from the landfill gas facility to collect the gas.

The Tax Code is unclear whether the new components run to cells in the landfill over time are considered part of the landfill gas facility, and thus, the question is raised whether gas from these cells are eligible for the Section 29 tax credit. Under S. 358, a landfill gas facility would include additional ''wells, pipes, and related components'' used to collect landfill gas. Further, the new components of the expansion would share the facility's placed in service date for purposes of Section 29. For example, the wells, pipes, and related components added to an eligible facility placed in service in 1997 would share the eligible facility's 1997 placed in service date and gas produced from the facility would receive the credit for the duration of the facility's credit pay out period.

In contrast, the provision in the Senate Energy bill would include all wells, pipes, and related components added to the eligible facility, but for all expansions placed in service after date of enactment, the components would be treated as a new facility with a new placed in service date. The difference is critical since other provisions of the Senate Energy bill subject new LFG facilities to a new volume cap of 200,000 cubic feet per day. As I mentioned, this new volume cap will seriously curtail the use of Section 29 for LFG under the bill, and it was never my intention to deny payment of the full credit for gas produced from expansions of the original facility during the 10-year payout period.

The potential energy and environmental benefits of future LFG projects are substantial, but they will be lost if we do not provide adequate provisions to support project development. I request that Chairman GRASSLEY and Senator BAUCUS continue to work with me to make sure Americans garner all of these benefits.

Mr. GRASSLEY. Mr. President, I want to assure Senator LINCOLN that I will continue to work with her to make sure adequate incentives for LFG are included in any final package from the

upcoming House-Senate conference. Her concerns are my concerns as well. She has started them well and I will devote my best efforts to resolving them as we move forward on discussions and deliberations with the House of Representatives.

LABOR LAW COLLOQUY

Mr. NICKLES. Mr. President, I would like to ask my colleague from New Hampshire, the chairman of the Committee on Health, Education, Labor and Pensions, if he shares my understanding that the sense of Congress contained title 7, section 714, of the Energy bill, H.R. 6, dealing with project labor agreements, is exclusive to the natural gas transportation construction project in the State of Alaska under this title?

Mr. GREGG. I would say to my colleague that he is correct. Further, the provision is neither legally binding nor should it be construed to undermine or conflict with Executive Order 13202.

Mr. NICKLES. Mr. President, to further clarify, I ask my colleague, should the inclusion of this provision be seen as a break from the longstanding tradition of Federal Government neutrality in labor-management relations?

Mr. GREGG. No. The sense-of-Congress provision should not be interpreted to encourage the sponsors of the Alaska natural gas transportation project to engage in discriminatory hiring or contracting practices on the basis of a person's labor affiliation or lack of labor affiliation.

Mr. NICKLES. Mr. President, I thank my colleague from New Hampshire for his view on this important labor law clarification.

ENERGY TAX INCENTIVES

Mr. VOINOVICH. Mr. President, I would like to take this opportunity to express my support for States that provide tax incentives for ethanol or for electricity produced from clean coal technology or renewable in their State. For example, in my home State, the Ohio coal tax credit provides $3 per ton of Ohio coal burned using clean coal technology. This tax credit encourages use of clean coal technology and holds down electricity costs in Ohio. With Ohio's large manufacturing base, affordable energy costs keep costs down to these companies and keep jobs in the State.

I believe that States should have the opportunity to provide tax incentives for energy production and am hopeful that this is something we can address in conference on this bill.

Mr. INHOFE. I agree with my colleague. States should be able to provide incentives for energy production, much like the Federal Government does including incentives in this bill. I believe that this issue is something that should be addressed by the conference committee on this bill.

Mr. DOMINCI. I understand the concerns raised by the Senators from Ohio and Oklahoma and would like to work with them to ensure that States maintain the right to provide these incentives.

CREDIT FOR INSTALLATION OF QUALIFIED FUEL CELLS

Mr. BAUCUS. The Energy Tax Incentives Act provides an incentive for new business installations of qualified fuel cells. For those in the future who might be interested in ascertaining the intent of the authors of this provision, the Finance Committee in drafting this language did so with the knowledge that there are various types of fuel cells that convert the chemical energy in fuels, such as hydrogen or methanol, into electrical energy by means of electrochemical reactions. Rechargeable fuel cells can convert electricity into chemical energy that can be stored, and then reconvert that chemical energy into electrical energy when it is needed. Rechargeable fuel cells can provide the capability for storing electricity during periods of low demand and releasing it at periods of high demand. This feature can help stabilize the output from renewable resources, including wind generation, electricity generated from swine and bovine waste nutrients, geothermal power, solar power, and biomass facilities. This language is intended to encourage the provision of electricity through non-polluting means, and to assist in the development of alternate, renewable resources. Our policy is to help develop these and other alternative, renewable resources.

As the chairman of the Finance Committee who has worked diligently to develop appropriate incentives for renewable resources, is it also your view that the proposed credit for qualified fuel cells should include rechargeable fuel cells, such as those that store electricity generated from these renewable resources?

Mr. GRASSLEY. As my friend from Montana pointed out, I am pleased that the tax title of the pending energy conference report includes several such incentives on which we have dedicated much effort and attention. Fuel cell power plants represent a promising means for providing electricity that is generated in environmentally friendly means and from nonconventional sources. They also provide important load-leveling capabilities that will reduce the stress and reliance on our Nation's electricity grid. I am pleased to assure my friend from Montana that I will work to make sure that rechargeable fuel cell power plants, such as those he described, would be eligible for this tax credit.

Mr. BAUCUS. I thank my friend from Iowa for his cooperation on this issue, and I look forward to continue our efforts to enact this important energy security legislation.

NUCLEAR WASTE

Mr. REID. I want to confirm that acceptance of this still does not create any opportunity to discuss nuclear waste issues in conference.

Mr. DOMENICI. I agree with the Senator's view. I will be a conferee on this bill. I assure the Senator that I will resist any attempt to open the conference to discussion of waste issues. I would also like to note that there are provisions in this bill that will allow the national labs to play a strong role. From our positions on the Energy and Water Development Subcommittee, let's work together to ensure their participation.

CRIMINAL LIABILITY

Mr. INHOFE. I would like to engage the Senator in a colloquy and draw the Senate's attention to several statutes which have been, through litigation, expanded beyond what are believed was the intent of Congress.

Mr. DOMENICI. Is the Senator referring to the criminal negligence provision of the Clean Water Act and the strict criminal liability provision of the Migratory Bird Act and the Refuse Act which can be triggered by a simple accident?

Mr. INHOFE. Precisely. Now, I want to be clear that I do not want to suggest for a minute that we should make it easier for polluters to damage the environment or put the public at risk.

Mr. DOMENICI. But the situation the Senator is talking about refers to clear accidents involving ordinary people, correct?

Mr. INHOFE. Yes. Recent court decisions have made it clear that employees, at any level, who are involved in environmental accidents, can be prosecuted criminally, and potentially imprisoned. These are non-deliberate environmental accidents that do not threaten or harm others.

Mr. BREAUX. I am also concerned about criminal liability as it applies to oil spills. In fact, during the 106th Congress, I introduced legislation to address a long-standing problem which adversely affects the safe and reliable maritime transport of oil products. The legislation was aimed at eliminating the application and use of strict criminal liability statutes, statutes that do not require a showing of criminal intent or even the slightest degree of negligence, for maritime transportation-related oil spill incidents.

As stated in the Coast Guard's environmental enforcement directive of 1997, a company, its officers, employees, and mariners, in the event of an oil spill ''could be convicted and sentenced to a criminal fine even where [they] took all reasonable precautions to avoid the discharge.'' Accordingly, responsible operators in my home State of Louisiana and elsewhere in the United States who transport oil are unavoidably exposed to potentially immeasurable criminal fines and, in the worst case scenario, jail time. Not only is this situation unfairly targeting an industry that plays an extremely important role in our national economy, but it also works contrary to the public welfare.

To preserve the environment, safeguard the public welfare, and promote the safe transportation of oil, we need to eliminate inappropriate criminal liability that otherwise undermines spill prevention and response activities. I

pledge my support to work with my colleagues to address these environmental liability issues.

Mr. INHOFE. The American Waterways Operators have devoted a great deal of time to training mariners and vessel operators. Clearly, the Coast Guard goes to great lengths to ensure its officers and staff are well trained. However, unfortunately, accidents—true accidents—happen.

Mr. DOMENICI. My colleagues are clearly describing a legal minefield where employees involved in an accident become less likely to cooperate with accident investigations because they are being advised by counsel not to potentially incriminate themselves.

Mr. INHOFE. That is absolutely correct.

Mr. DOMENICI. And as chairman of the Environment and Public Works Committee, is it the Senator from Oklahoma's position that this leads to less environmental safety instead of more?

Mr. INHOFE. Indeed. I also wish to draw the Senator's attention to the Clean Air Act, which has a different, and I suggest, more appropriate provision of negligent endangerment.

Mr. DOMENICI. I am familiar with the provisions—it requires risk of physical harm to the public for an accident to trigger criminal prosecution.

Mr. INHOFE. Yes. That is the type of activity for which we should reserve criminal prosecution. I also remind my colleague that the Clean Water Act clearly allows prosecution for deceitful or purposeful environmental damage, or for fraudulent efforts to conceal such damage—a provision we would not change.

Mr. DOMENICI. I agree with the Senators' assessment, share their concern, and look forward to working with them to address this important issue.

CANTWELL AMENDMENT

Mr. DASCHLE. Mr. President, Senator CANTWELL has a market manipulation amendment that she was seeking a vote on. It is my understanding that the agriculture appropriations bill or the energy water appropriations bill is where she would like to offer her amendment. I would inquire of the majority leader that should she offer her amendment to either of those bills would she be assured of a vote on, or in relation to, her amendment with no second degree amendments prior to such vote?

Mr. FRIST. The Democratic leader is correct if Senator CANTWELL offers her amendment to that bill she will get a vote on, or in relation, to it.

FEINSTEIN AMENDMENT

Mr. DASCHLE. Mr. President, Senator FEINSTEIN has a market manipulation amendment that she was seeking a vote on. It is my understanding that the Agriculture appropriations bill would be the appropriate bill for that amendment. I would inquire of the majority leader that should she offer her amendment to that bill would she be assured of a vote on, or in relation to, her amendment with no second degree amendments prior to such vote?

Mr. FRIST. The Democratic leader is correct if Senator FEINSTEIN offers her amendment to that bill she will get a vote on or in relation to it.

Mr. FEINGOLD. Mr. President, energy policy is an important issue for America and one which my Wisconsin constituents take very seriously. The bill before us seeks to address important issues, such as the role of domestic production of energy resources versus foreign imports, the tradeoffs between the need for energy and the need to protect the quality of our environment, and the need for additional domestic efforts to support improvements in our energy efficiency, and the wisest use of our energy resources. Given the importance of energy policy, an Energy bill is a very serious matter and I do not take a decision to oppose such a bill lightly. In my view, this bill does not achieve the correct balance on several important issues, which is why I will oppose it. In addition, I am deeply troubled by the process that has led us to abandon efforts to develop meaningful energy legislation, and instead simply stop our work, take up last year's bill, and pass it.

In my work on this legislation, I have heard from large numbers of my constituents. Of the many pieces of correspondence I received on the matter of a national energy policy was a detailed paper prepared by a group of students at Marquette University. The students wrote, as part of their interdisciplinary minor in environmental ethics, a comprehensive analysis and a series of recommendations regarding energy usage and efficiency. I commend and compliment these students on their hard work, and I am very pleased to see young people becoming so involved in our political process.

In conducting their analysis and crafting their recommendations, the students underscored that it is imperative that our focus in developing energy policy remains resolutely long term. I share this belief, and I agree with the students' assessment that sensitivity is required in working to craft an energy policy because of its effect on consumers, on our society, and on the environment. During my time in the Senate I have consistently worked to ensure that energy policy is both environmentally and fiscally responsible. Unfortunately, I cannot assure these students, or any of my other constituents, that this bill meets those goals.

This bill now contains a renewable portfolio standard requiring electric utilities to generate or purchase 10 percent of the electricity they sell from renewable sources by 2020. I supported an amendment offered by the Senator from Vermont, Mr. JEFFORDS, last year to increase this percentage to 20 percent, but it was watered down to 8 percent. Additional exemptions in this bill make this target actually a target of 4–5 percent of new generation from renewable sources by 2010. We can and should do better on renewable energy sources. This bill should have set a serious target, and we should have had a floor debate on this issue.

In addition, this bill repeals the pro-consumer Public Utility Holding Company Act, the Federal Government's most important mechanism to protect electricity consumers. The Senate failed to adopt my amendment to protect electricity consumers, investors, and small businesses from abusive transactions between utilities and affiliate companies within the same corporate family. It also failed to pass a proposal by my colleague from Washington, Ms. CANTWELL, banning Enron-like trading schemes. The bill should have given the Federal Government more oversight of utility mergers and tried to prevent utilities from passing on the costs of bad investments to consumers and from using affiliate companies to out-compete small businesses. Also, the electricity provisions of the bill do not provide additional oversight of energy markets. This would have been addressed by an amendment by the Senator from California, Mrs. FEINSTEIN, that passed and which I supported, that would have fostered a more stable market with transparent transactions and helped to prevent another Enron.

Finally, I am also concerned that we included $14 billion in tax breaks without paying for them on this bill. Our budget position has deteriorated significantly over the last year, in large part because of the massive tax cut that was enacted. We now face years of projected budget deficits. The only way we will climb out of this deficit hole is to return to some sense of fiscal responsibility, and first and foremost that means making sure the bills we pass are offset. Without offsetting the cost of the tax package, we are digging our deficit hole even deeper and adding to the massive debt already facing our children and grandchildren.

The American people deserve better than this bill, and I cannot vote in favor of it. This measure will need to be greatly improved in conference to get my vote.

Mr. COCHRAN. Mr. President, I am concerned about the recent efforts by the Federal Electric Regulatory Commission, commonly known as FERC, to make RTOs mandatory. Recently, FERC released a white paper describing their intentions to mandate Regional Transmission Organization participation by utility companies.

A Regional Transmission Organization, or RTO, would act as a third party which sets the rules for power companies about pricing and delivering power in a given region. These RTOs are being formed around the country. There may eventually be one in the South. But, that should not give FERC the authority to strip State Public Utility Commissions of their right to decide whether their states enter into these types of arrangements.

I understand that entering into an RTO may be a good choice for some

companies and Public Utility Commissions to make. I believe that is who should be deciding these issues—not the FERC.

I have a letter from the Mississippi Public Service Commission which I would like to submit for the RECORD. It clearly states the problems which would beset my state if it were forced into an RTO.

Currently, the FERC is attempting to force utilities to enter into RTOs. There was a federal court case in Atlantic City about this. Some groups point to that case and say that since the utility won its right to withdraw from the RTO, that every other utility can simply file a suit if they are mandated into an RTO. This is not a sensible way to make policy.

We should not equate the right to file a lawsuit with the voluntary ability to join one of these organizations.

I am pleased that an agreement has been reached to amend the Federal Power Act, not just this Energy Bill, to make it clear that FERC cannot mandate participation in an RTO. Unfortunately, this language expires on December 31, 2006. While I wish that there was no expiration to this provision, I am glad that the bill includes language to clarify that when this provision expires the FERC does not have authority to mandate participation into RTOs.

I am hopeful that the FERC will follow Congressional intent and allow states and utilities to decide when and if they wish to enter into an RTO. I thank Senator DOMENICI and his staff for their work on this provision and I am glad to have a commitment that this provision will be included in the final bill during the energy bill conference.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MISSISSIPPI PUBLIC SERVICE COMMISSION,
July 28, 2003.

Senator THAD COCHRAN,
Washington, DC

As a Mississippi State Utility Regulator, I appreciate the opportunity to submit for the record my comments and observations pertaining to the Federal Energy Regulatory Commission (FERC) and its efforts to restructure the electrical industry. Federalizing the delivery of electricity for Mississippi consumers would have a negative impact on our state.

In April of this year, the FERC released its white paper on Wholesale Power Markets and Standard Market Design. They continue to insist that Regional Transmission Organizations (RTO) will be mandatory and FERC will exert jurisdiction over retail service. If FERC has the authority to exercise jurisdiction over the Terms and Conditions of bundled retail service, this clearly suggest they will have a direct influence in the rates for such service. Bundled retail transactions are subject to State jurisdiction and the Terms and Conditions should not come under Federal control.

I personally question the legal authority, based on existing law, which would allow FERC to mandate Mississippi public utilitiess to join an RTO and ISO. To do so would require our electrical utility companies to turn over their transmission assets to third parties.

Even though our transmission facilities were built to serve local retail customers and paid for in their rates, FERC now claims everyone is entitled to the same priority and emphasizes that Terms and Conditions of the RTO or ISO tariff will apply equally to all users. If utilities are required to take service under the Terms and Conditions of a wholesale tariff, it is difficult to see how the transmission component of retail rates will not become FERC jurisdictional.

In May of 2000, we issued formal document to the Legislature after three years of Public Hearings pertaining to retail access transmission , in which we clearly indicated that restructuring the electrical industry in our state would not benefit all Mississippi consumers. The principle impact of wholesale competition in our state is in providing an additional option for meeting incremental generation needs via competitive procurement under long-term contracts and through short-term economic and reliability purchases. We do not depend on the wholesale market to the same extent, or in the same manner, as is the case with stats that have chosen a different regulatory scheme.

Our electric supplies are among the least costly and most reliable in the nation. We have sufficient generation, for the foreseeable future, and are aware of no major transmission bottlenecks that are resulting in cost or reliability problems for our consumers. We have an electric system that is serving the consumers of Mississippi in helping our state meet its economic development potential, therefore, in my opinion, allowing FERC to mandate RTO's and exert their jurisdiction over retail transmission is not only not necessary but will be financially harmful to our citizens.

Senator Cochran, I appreciate this opportunity to provide you and the Senate with my comments regarding this critical issue and I strongly urge the Senate to preserve our authority to manage and regulate our electrical industry in Mississippi.

Sincerely,

NIELSEN COCHRAN,
Commissioner.

Mr. LEAHY. Mr. President, while I recognize the Nation needs a sound and balanced national energy plan emphasizing a clean, reliable, sustainable, and affordable energy policy, unfortunately this bill fails to do that. In my home State of Vermont we are proud of an environmental ethic that supports the increased use of clean and sustainable energy. Vermonters have a long history of taking good care of our natural resources, which has served our economy and ecosystems well. It is important to strike a balance when working to resolve environmental and energy problems. That is why I will continue to strongly support programs such as Low-Income Home Energy Assistance Program.

While the Senate has been debating the energy bill on-and-off for the past few months, the debate has been fairly limited compared with the debate on the energy bill during the 107th Congress. During the 107th Congress, when the Democrats were in the majority, we debated the bill for 24 days over an 11-week span. During that time, the Senate adopted 126 amendments and rejected 18 others. At no time during the consideration of that bill, did the Senate try to limit debate by entering into a unanimous consent agreement to limit amendments. In comparison, we have had very limited debate on this bill and avoided critical issues.

Many of my colleagues offered common sense amendments that would have greatly improved the bill. This includes conservation measures offered by Senate DURBIN that would have required cars, SUVs, minivans and crossover utility vehicles to achieve a new fuel standard of 40 mpg by 2015 and would require pickup trucks and vans to achieve a CAFE standard of 27.5 mpg by 2015. Senators CANTWELL and BINGAMAN offered several amendments to the electricity title to improve consumer protections. Senators FEINSTEIN and SCHUMER offered amendments to reduce the impact of ethanol mandates on consumers in the Northeast. I am disappointed that all of these amendments failed.

Further, it should be noted this bill is fiscally irresponsible. Senators WYDEN and SUNUNU proposed an amendment that would have struck from the energy bill a provision to make available Federal subsidies for nuclear power plants. This amendment was not against nuclear power but an amendment for Congress to be fiscally responsible to the American taxpayer. Unfortunately, this amendment failed earlier in the summer. Now the American public will have to subsidize an estimated $14-$16 billion for a source of energy that leaves many citizens concerned over their safety. Lastly, many other amendments that attempted to hold the administration accountable to environmental laws were rejected by my colleagues that will result in further degradation to the American public's natural resources.

If these amendments had passed, they would have reduced our dependence on foreign oil imports, maintain air quality protections, and conserve energy. Instead this bill forces the American people to pay for the construction of new nuclear power plants and increased oil and gas drilling.

The Senate had a real opportunity to put together a sensible energy policy that shifted the focus from nuclear power and offshore drilling to a clean, renewable, and affordable energy plan. Unfortunately, we failed to so this, and that is why I cannot support S. 14.

Ms. MURKOWSKI. Mr. President, I come to the floor at this late hour to express my strong support for Senate passage of a comprehensive energy bill. This bill is an important first step in increasing the energy security of the United States. It has been a long time in coming, but we welcome this action by the Senate tonight.

From the jaws of defeat come some of the sweetest victories, and I want to commend our leadership for getting this done, really to the surprise of many pundits and experts around DC who said it could never get done this week, much less by the end of this year. We should also acknowledge the willingness of the other side to reach accommodation on this important bill.

Every where I go people talk to me about natural gas—back home in Alaska, in Seattle, or here in Washington, DC. Everyone, from the President of the United States to Federal Reserve Chairman Alan Greenspan to the farmers of Iowa, know that we face serious problems in our natural gas supply.

With passage of this bill the Senate is telling consumers, farmers and natural gas dependent industries that help is on the way. That is good for American jobs, good for our families and their pocket books and good for the economy. The provisions contained in this bill will truly help us get the all important Alaska natural gas pipeline moving forward.

Experts predict that the U.S. will face a 20 billion cubic foot per day shortage of gas by the year 2020. In Alaska we have 35 trillion cubic feet of gas in Prudhoe Bay that has already been found, and we expect more than 100 trillion additional cubic feet to be found on the North Slope with relatively little effort. Alaska's natural gas can help close more than 25 percent of the expected 2020 gap, but we need to assure the markets that some of the risk associated with this project can be mitigated. If we can get it built it will be one of the largest privately financed projects in the history of the planet. It will employ over 400,000 people nationwide, with thousands of new jobs being created in my State of Alaska. Nationally the creation of 400,000 new jobs could reduce our unemployment rate by a whopping ½ of a percentage point. That is a huge shift from just one project. And it will mean a stable supply of gas for America for years to come. No other project I know can have that kind of positive impact on America—from either a gas supply, energy security or job creation perspective. It is imperative that we get this project moving now.

I would note that the Senate bill reported by the Energy Committee this year, and the accompanying tax provisions reported out of the Finance Committee this year, called for a marginal well credit that would have capped tax credits for the production of Alaska gas at 52 cents per thousand cubic feet of gas, should the price fall below $1.35 at the wellhead.

It also contained a loan guarantee for up to $18 billion of the project's cost and an accelerated depreciation provision.

The bill we are passing tonight reverts to last year's proposal that provides a gas line tax incentive to producers if the price of natural gas falls below $3.25 per thousand cubic feet delivered to the AECO hub in Canada. Producers, however, will have to pay the credit back in full whenever the price of gas exceeds $4.85 per unit.

The provision accepted by the Senate also includes a loan guarantee where the government helps to underwrite some $8 billion of the first $10 billion of the cost of the line, in the event that unexpected energy price drops occur.

It includes all the other provisions that passed the Senate last year, including: a prohibition against a northern route, guaranteeing the gas line will follow the Alaska Highway south through the Railbelt and Yukon to reach the Lower 48 States; a streamlined permitting and expedited court review process to speed construction; Provisions that allow Alaska to control gas to facilitate use for heating or construction of petrochemical plants in State; a guarantee that the gas line will accommodate an LNG plant to be developed at tidewater in Alaska whenever exports markets for the gas appear; provisions to guarantee that new gas producers in Alaska will be able to get their gas to market; and a provision that authorizes $20 million for worker job training and promotes Alaska-hire provisions in State.

The bill also includes a proposal that will provide up to $120 million in grant aid yearly for rural electric improvements in high-cost areas. These grants can go for power plants or to reduce power demands by other utilities.

The bill also includes a $35 million grant ($5 million per year for seven years) to Alaska to help fund its Rural Power Cost Equalization (PCE) program that subsidizes the high cost of electricity in rural Alaska.

The bill authorizes the Department of Energy to make a loan of up to $125 million to retrofit the Healy clean coal plant with new technology so it can produce power economically without causing air pollution problems. The loan should make the plant economic, provide vitally needed power to the Fairbanks area at reasonable cost and aid the Usibelli coal mine and its workers.

The bill includes a tax incentive equal to $3 per barrel to produce heavy oil from northern Alaska or to produce low-pollutant synthetic fuels from coal. The same provision also provides a tax credit to fuels produced before 2007 from biomass, tar sands, or brine. For heavy oil, Alaska's West Sak field contains 15 billion barrels of known heavy oil. The incentive should help make an additional 200 million barrels of production economic over the next decade.

This legislation reauthorizes the Arctic Science Research Act of 1984 and expands its power to make grants for scientific research.

Thankfully the bill also makes it a federal crime to damage any intrastate energy pipeline. The amendment specifically provides extra legal protection to the trans-Alaska oil pipeline.

This package contains language originally proposed by Senator TED STEVENS with Senator BYRD for the Barrow Arctic Research Center to support climate change research and scientific activities. The amendment includes $35 million for planning, design, support and construction of the Barrow facility. The goal is to develop technologies needed to reduce greenhouse gas emissions.

I am pleased the bill also contains the following important provisions: Tax credits for hybrid and fuel-cell vehicles; tax credits for alternative and renewable fuels use and development; tax credits for marginal oil producers to protect oil production from stripper wells; extra funding for the Low Income Home Heating Program (LIHEAP) and for low-income weatherization grants; funding for an Advanced Clean Coal Technology program; funding for a hydrogen energy act; provisions to increase the use of ethanol in clean burning gasoline; reauthorization of hydroelectric dam licensing provisions; reauthorization of the Price Anderson Act to permit nuclear power to continue; provisions on electricity restructuring; and provisions to require a sensible increase in automobile fuel efficiency standards.

Using last year's bill was the quickest way to get the bill off the Senate floor so that details of a final package could be worked out in a conference committee with the House. Without this action today it was unlikely we would have seen positive movement until the late fall. Now we can move forward quickly for America and Alaska.

I want to assure Alaskans that I will work to include in the conference report on this bill the provisions I secured during this year's debate in the Energy Committee. With those changes this bill will help us to address our energy problems even more.

I thank the fine Chairman of the Energy Committee for his effort and leadership and I applaud the work of both Leaders to get this bill done before the August recess.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

FREE TRADE AGREEMENTS

Mr. DODD. Mr. President, I rise to speak about the Chile and Singapore free-trade agreements that are currently before this body. If these agreements were similar to earlier free-trade agreements voted on by this body—NAFTA, Israel, Jordan—I would have absolutely no difficulty whatsoever casting votes in favor of both. That, however, is not the case. These agreements are not your garden-variety free-trade agreements. In fact, these two agreements break new ground with the inclusion of specialized immigration provisions which weaken existing legal safeguards against U.S. employers displacing American workers with lower wage nonimmigrant visa holders.

I thank immensely the Presiding Officer who held a very worthwhile hearing just a day or so ago in the Judiciary Committee on one of these visa provisions, the L–1 visa issue. I thank him immensely for giving me an opportunity to address my concerns about some of the loopholes in that particular agreement.

I want to draw my colleagues' attention that I have rarely, if ever, voted

against a free-trade agreement. I have been a strong supporter of free trade, but I must caution my colleagues about what is in these two agreements that were never a part, as I understood it, of the trade laws but rather add immigration provisions which I think go far beyond what many of us intended to be the case.

My concern is, despite some very good provisions in both the Chile and Singapore agreements, we are breaking new ground which I think we will come to regret with some 30 other bilateral free-trade agreements pending before this body that will be voted up or down without any amendments being offered which is a result of the fast-track authority which this body endorsed only a number of months ago.

This is but one more example of the troubling pattern of insensitivity to the concerns of American workers that our trade representatives not negotiate away their jobs in the name of free trade. U.S. negotiators have, in effect, been doing so by ignoring the labor practices and policies of our trading partners in the context of including new trade agreements and by not addressing the linkage that exists between foreign labor markets and the ability of American workers to remain internationally competitive.

One year ago, the Senate voted to give the President trade promotion authority allowing him to negotiate additional trade agreements and limiting the Congress to an up-or-down vote on each trade agreement without the ability to amend them.

Breaking with my normal practice with respect to such legislation, I decided to oppose final passage of that bill. I did so because I did not think the legislation included adequate language making it crystal clear that a primary negotiating objective of future trade agreements must be to ensure that as a condition of the U.S. signing such agreements with other governments, those governments must live up to recognized international labor organizations' standards with respect to wages and other workers' rights.

During the so-called fast-track debate, I offered an amendment that would have required fast-track authority to be in parity with the Jordan standards, a trade agreement that passed 100 to 0 in this body only a few months earlier.

I thought, with Congress poised to renew Presidential fast-track authority, it was more important than ever that with the discretion being granted to the President to negotiate trade agreements, an obligation to uphold universally recognized labor standards in those agreements be part of the deal.

Because the language included in the Jordan Trade Agreement dealt effectively with that matter, it made perfect sense, since we had voted 100 to 0 to endorse it, to include similar language as part of future agreements.

The administration disagreed with that approach and my amendment was defeated. Under those circumstances, I had no choice but to vote against final passage of the permanent trade authority legislation, and did so with regret.

At the time of the vote, I urged the administration to take note of the vote by someone who was normally a strong supporter of free-trade agreements and understand it was an expression of deep concerns that poorly crafted free-trade agreements will undermine our economy and the prosperity of working American families.

I was amazed that the concerns expressed by the American workers during the debate of the permanent trade authority legislation had been so quickly confirmed with respect to the first two agreements that this administration had sent to Congress since the FTA became law. There are likely to be as many as 30 free-trade agreements negotiated utilizing this extraordinary authority.

I have been a strong proponent of entering a bilateral trade agreement with Chile for many years. I am extremely disappointed that provisions that should not be in this agreement have been included. In all the years the proposal for a free-trade agreement with Chile has been discussed, there was never, ever—never—any mention of nonimmigrant visa provisions being included as part of a final agreement.

I recognize there are many features of the Chile and Singapore agreements that will promote a freer flow of goods and services between the United States and Chile and Singapore. The agreements include comprehensive commitments by Chile and Singapore to open their agricultural, service, and overall markets to the United States. That is great news, indeed.

Were those the only provisions we were considering today, I would, with enthusiasm, endorse and support these two agreements. But there are other provisions in these agreements that my colleagues ought to pay attention to, which have gotten very little attention at all. It is those provisions I am concerned about because they are steps in the wrong direction with respect to protecting American jobs in my State and elsewhere across this country.

I would predict there are Members of this body who are unaware that these agreements will allow as many as 1,500 nonimmigrant visa holders from Chile and 5,400 from Singapore to be hired each year by U.S. employers, without those employers first having made a good-faith effort to fill the vacancies with American workers. These agreements will make it easy for U.S. employers to employ temporary workers from those two countries with little or no oversight by the Department of Labor. Moreover, once enacted into law, these provisions will have the effect of undermining the intent of our nonimmigrant visa programs—namely, that they be temporary in nature—by allowing Chilean and Singaporean visa holders to renew their visas for an indefinite period of time.

These provisions are not in the interest of hard-working Americans who currently find themselves out of work or in fear that they will find themselves unemployed at a moment's notice.

With the unemployment rate at 6.4 percent, and more than 9 million people in this country unemployed, I think we have a responsibility to enact policies that will bring about more job opportunities for U.S. workers instead of making it easier for additional workers to lose their jobs to lower-wage nonimmigrant visa holders.

The U.S. Trade Representative has not demonstrated, in my view, the inclusion of these provisions as central to the effectiveness of these agreements. There is absolutely no evidence whatsoever that laws governing the H–1B and L–1 visa programs pose barriers to trade or undermine our ability to meet our obligations in these trade agreements. I will never understand why the Bush administration used the opportunity of these trade agreements to actually weaken the laws with respect to those two programs, and doing so statutorily.

At the very time we are debating these pending agreements, critics of our existing H–1B and L–1 programs are crying foul. The root of their concerns is that current law contains insufficient safeguards against the misuse of those programs in ways that cause American workers to be displaced from their jobs. Yet the language in the bills before us today is even weaker than existing laws in these areas.

Last week I introduced S. 1452, the U.S. Jobs Protection Act. This bill increases the monitoring and enforcement authorities of the Department of Labor over the H–1B and L–1 visa programs, and closes loopholes in these programs to prevent unintended U.S. job losses. These agreements would prevent those reforms from being extended to H–1B and L–1 visa holders from Chile and Singapore. That is unacceptable, and ought to be to many of my colleagues.

I am extremely concerned unless those of us in this body speak out against the inclusion of these immigration provisions in the pending agreements, the administration will happily include similar language in the other remaining bilateral agreements that will come before this body, including the Central American free-trade agreement that is currently being negotiated. That would be a terrible mistake. In the best of circumstances, the CAFT agreement is going to have difficulty being approved next year. It will be dead on arrival, in my judgment, if the administration overreaches again in this area.

Mr. President, I regret the administration has chosen to overstep its authority in negotiating these agreements with Chile and Singapore. I strongly believe that trade—fair trade—creates new opportunities for America's manufacturers and our

workers. But as a Member of this body, I cannot support a bill that disregards the needs of American workers, allows immigrant legislation, migration legislation to be included so blatantly in a free-trade agreement, as we try to secure decent-paying jobs and keep our unemployment rates down, and offer Americans an opportunity.

It is hard enough to convince them that free-trade agreements are in the best interest of the American economy and for the creation of jobs, but when you give away, each year, under these two agreements, more than 8,000 jobs in this country, without ever having to face anything at all, that is wrong.

If we do not speak up tonight about it, believe me, as I stand here before you, you are going to see these provisions included in all of the remaining 30 bilateral agreements, and that would be a mistake, in my view.

In a perfect world, I would hope these agreements could be withdrawn and resubmitted to the Senate without the inclusion of these immigration provisions. However, that is unlikely to happen, obviously. For that reason, I am left with no choice but to cast my vote—with deep regrets, with deep regrets—in favor of protecting, as I must, American working families, who are under tremendous pressure and strain today, and against the implementing legislation before us.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold his suggestion?

Mr. DODD. Withdrawn.

Mr. DASCHLE. Mr. President, I have long supported initiatives to expand foreign markets for American goods. Trade liberalizing agreements with other countries, if negotiated correctly, can benefit American farmers, ranchers and manufacturers. Likewise, strengthening economic ties with these countries can advance our foreign policy interests. The agreements pending before us today, the Chilean and Singaporean Free Trade Agreements, fit both of these criteria, and I intend to support them both.

The agreement with Singapore, our twelfth largest trading partner, is the first such FTA with an Asian nation. Singapore is a long-standing ally in this vitally important region and has worked closely with the United States in the war against terrorism. Currently, for instance, Singapore is building an aircraft carrier pier at its port, the largest in the world, specifically for U.S. vessels.

Under this agreement, Singapore will eliminate duties on all U.S. products and broadly open its service sector across a wide range of industries. These and other commitments, such as strong protection of intellectual property rights, will benefit American investors and exporters.

With regard to Chile, I am pleased that after years of much anticipation this agreement is finally complete. Chile has stood out as one of South America's economic leaders for some time, and this agreement will serve to solidify our support for its continued progress. Today, Chile has free trade arrangements with Canada, Mexico, and the European Union. This United States-Chile Free Trade Agreement will provide important parity for American exporters. This is very important for wheat growers who have lost substantial market share as a result of the Chile-Canada trade agreement. Our agreement should provide an opportunity to re-gain those exports.

The issue that has concerned me most is what will the impact be on our beef producers. The impact is more complex than the clear advantage for wheat farmers. Chile potentially is a consumer market for beef. Chile is a substantial importer of beef and the U.S. produces the finest beef in the world. The agreement takes important steps to open the Chilean beef market to U.S. producers, many of whom are from my home State of South Dakota.

My concern and that of many South Dakota farmers is that beef born and raised in Argentina will be sent to Chile for slaughter and be labeled as Chilean beef under the existing rules of origin law that only requires the product to be slaughtered in a country. After careful examination, it is my expectation, however, that the administration will prevent such transhipment for other countries in the region and protect our own farmers and ranchers from injurious imports from abroad.

Therefore, I believe that on balance the U.S. Chilean agreement is good for our beef producers. The agreement is good for our other exporters and it advances our foreign policy interests and I support it.

I support the agreements before the Senate today and will vote for their passage. I do want to take this opportunity, however, to raise my strong concern about a possible trade agreement with Australia.

Australia has long been one of America's staunchest allies. Our shared commitment to freedom and democracy is the foundation of a relationship that has grown even stronger since September 11. Indeed, Australia was among the first countries to offer its support in the wake of terrorist attacks on our country last year. Australia is an important American ally and one who we can and should work with closely within the WTO multilateral negotiations.

I am, however, deeply concerned about the effect that a potential free trade agreement with Australia could have on our own beef, lamb and wool producers.

Australia is increasingly involved in grain feedlots for cattle. Grain feed beef more directly compete with U.S. beef in the higher end beef market because of its higher quality. Australian farmers receive the benefit of a state trading enterprise, the Australian Wheat Board, which manages the supply of all grain in that country, and thus influences the price of grain. Ranchers in Australia receive assistance, not only from the wheat board, but also receive various other subsidies.

Australia is the world's largest beef exporter and with fewer people than cows, the country is not a significant import market. Finally, Australian live cattle are increasingly being exported. In fact USDA projects that over 900,000 head will be exported in 2003 using, among other means, huge ocean-going ships that can deliver up to 25,000 head per vessel. As a potential FTA with Australia progresses, I am hopeful that we will be able to address these very real concerns. Without some remedy, I will not be able to support the agreement.

With regard to lamb, there are not U.S. tariffs on lamb today. Currently one-third of our domestic lamb consumption is imported lamb and we are Australia's biggest export market for lamb. The U.S. currently takes in 20 percent of all of the lamb Australia produces. However, Australia's prices are well below our market, and rather than work to develop new markets, most often they come into our best markets, and underprice our domestic producers. In fact, I am told that they have even compensated supermarkets in the U.S. with advertising budgets on the condition that they sell only imported products.

With regard to wool, we need to protect the existing tariffs. Australia has a record of vastly over-producing for the market and negatively impacting our domestic prices. The current tariffs are important to keep in place. As a potential FTA with Australia progresses, I am hopeful that we will be able to address these very real concerns. Without some acceptable remedy, I will not be able to support the agreement.

A year ago, we worked on a bipartisan basis to pass Trade Promotion Authority. This law was employed to pass the two trade agreements before us. The administration is to be commended for the successful conclusion of these agreements and again I will support both.

However, it is clear that support for trade liberalization is fragile both in the Congress and around the country. I urge the administration to work with us and to take steps to build greater consensus and to avoid taking steps that undermine that consensus:

Trade Promotion Authority is a delegation of the Congress's authority. The administration jeopardizes future such delegations if it oversteps its bounds. This Congress did not vote last year to delegate the authority to make immigration policy. The administration must avoid such over reaching in the future.

I continue to have concerns about how rules of origin are applied. The Bush administration should insist on a strict standard for designating the country of origin of both live cattle

and beef. At a minimum, the ''born in country'' standard should be adhered to. Although I would certainly prefer that we work with our trading partners to obtain a ''born, raised, and slaughtered'' standard for designating the country-of-origin of beef. This latter standard reflects the current country of origin law in place in the United States. This tighter standard is advocated by the major farm organizations in our country in addition to cattle ranchers and consumer groups who all believe this is a better definition.

Last year, we put top priority on helping those Americans who are on the losing side of trade. The administration made an agreement with us, but to date the administration has not honored that agreement. TAA for Farmers was supposed to be operational 6 months ago, yet has still not gotten off the ground. The Health Tax Credit was to be made available and advanceable this month, yet only 22 States have made the appropriate steps. More importantly, a number of technical corrections to the program have been stalled in Congress and the administration has not helped advance them. These technical corrections are essential to ensuring that the targeted workers, which we agreed on, receive their much-needed health benefits. The wage insurance program for older workers has remained completely dormant and the administration has taken no steps to implement this program.

Since the beginning of 2001, more than two million manufacturing jobs have been lost. I strongly urge the administration to join with us and let's use the replacement of the FSC regime as an opportunity to promote U.S. manufacturing jobs.

We must recognize that there is no ''one-size-fits-all'' approach to dealing with labor and environmental standards in other countries. While I applaud the provisions included in these agreements, they should not, I repeat, should not, be perceived as some sort of template for future negotiations. The conditions of countries in Central America are significantly different than those in Chile or Singapore and should be treated as such.

We need to have strong enforcement of our trade laws. Currently, for example, the United States International Trade Commission is reviewing the section 201 tariffs in place against injurious imports of steel. So far, the temporary restrictions have provided some mills the time needed to make modest steps towards recovery. Repealing these measures now, however, would greatly undercut this moderate success, and I therefore urge the President to maintain these safeguards for the full three years.

Finally, today is a good day for relations between the United States and our friends and partners in Singapore and Chile. By strengthening our economic ties, we have benefitted the people of all our countries and encouraged a mutually supportive partnership that will benefit all aspects of our bilateral relationships.

Mr. MCCAIN. Mr. President, I support swift passage of the U.S.-Chile and U.S.-Singapore Free Trade Agreement Implementation Acts, S. 1416 and S. 1417, respectively. These are the first in what I hope will be a long list of trade agreement implementation bills necessary to enact trade deals negotiated and signed by the President under the authority granted him by Congress last year.

Stemming from the Trade Act of 2002, which included Trade Promotion Authority (TPA), agreements such as the two before us are helping to reestablish U.S. credibility in the area of trade. The President and his administration are now able to more freely negotiate, encouraging countries once reluctant to begin trade negotiations with the U.S. to come to the table. The U.S.-Chile Free Trade Agreement and the U.S.-Singapore Free Trade Agreement are prime examples of the United States' commitment to free and open trade. I hope they provide a launching pad for new trade agreements with key partners in every region of the world.

Our staunchest allies and most important trading partners have had reason to doubt our dedication to the free trade principles we have long advocated as a driving force of prosperity and stability. A series of short-sighted, protectionist actions in recent years has jeopardized our relationships with our most important trading partners. That makes enactment of these bilateral free trade agreements even more important.

These agreements may not have a dramatic economic impact in the United States, but they are sure to yield benefits to American consumers and businesses. Enactment of agreements such as those before us help us regain our credibility and leadership in championing free-trade principles around the world. I hope they set a precedent for more aggressive liberalization of our trade with other nations in Asia, Latin America, Africa, Europe, and the Middle East.

I commend Ambassador Zoellick for his efforts to bring these free trade agreements to fruition, as well as for his commitment to exhaustive consultations with Congress. Our agreement with Chile is one more step towards our goal of a Free Trade Area of the Americas, on which we all hope to see greater progress. Our agreement with Singapore, a key ally in the war on terror, will hopefully help propel future trade liberalization in Southeast Asia, one of the world's most dynamic regions.

As it stands now, Singapore is our 12th largest trading partner, and our largest trading partner in the strategic region of Southeast Asia. This agreement would eliminate many barriers to trade and investment, and improve market access and opportunities for U.S. goods and services. In addition, this agreement would provide regulatory reforms and transparency, two key components in establishing the strong ties and trust necessary for trade.

Implementation of the negotiated agreement with Chile would place us on an equal footing with the European Union and Canada, which already enjoy their own FTAs with Chile. Despite having to play market access catch-up, our farmers and ranchers will enjoy duty-free access to Chile's markets within 12 years; and computer and other information technology products, medical equipment, and other goods will gain immediate duty-free access.

Throughout the negotiating process, environmental and labor matters received considerable scrutiny. The FTAs address these concerns through provisions laid out in both agreements that call for Singapore and Chile to provide a high level of environmental protection, and require each nation to endeavor to improve upon their laws where necessary. Each nation is to reaffirm its obligations as part of the International Labor Organization and strive to make sure its laws reflect the labor principles therein.

These negotiations and the agreements they have produced are a good start towards accomplishing Congress' purpose for passing the Trade Act last year: an aggressive agenda to liberalize trade with key partners, producing comprehensive agreements which reduce barriers to trade, providing tangible benefits to American consumers and businesses, and reestablishing our credibility and leadership in championing free trade principles around the world.

I am, however, concerned that immigration provisions contained in these trade bills set a bad precedent. Although I support the spirit of these provisions, I strongly believe that changes to U.S. immigration policy should be thoroughly debated in Congress and such modifications do not belong in trade agreements negotiated between our government and other nations. I discourage their inclusion in future trade agreements.

Overall, these are fine examples of what Congress intended when we passed TPA. I hope we will soon see action on free trade agreements that are currently being negotiated with Australia, Central America, Morocco, Southern Africa, and others in the not too distant future. I also would like to see the Administration take concrete steps to liberalize trade in the greater Middle East, in effect operationalizing the President's call for a free trade area there within a decade.

Finally, I hope that the administration, with Congress's support, can make significant progress in the next round of global trade talks this fall. Global trade liberalization through the World Trade Organization is the most effective and efficient way to bring down barriers to trade, the best way to open the markets of key trading partners in Europe and Asia, and to enforce

free trade principles. The conclusion of economically meaningful bilateral trade agreements, coupled with an aggressive campaign for global trade liberalization, will reestablish our credibility and leadership on free trade and energize the American and global economies. America and the world will be better off as a result.

Mr. COCHRAN. Mr. President, a year ago, with the support of American agriculture, Congress approved legislation granting trade promotion authority to President George W. Bush. The President has demonstrated a strong commitment to expanding the American economy by actively engaging in an aggressive trade strategy. This strategy includes negotiations with Chile and Singapore, regional efforts with the Free Trade Area of the Americas, and the Central American Free Trade Agreement talks, and with the World Trade Organization.

Congress has had unprecedented access and consultation with negotiators, resulting in agreements without hidden compromises or concessions. Public hearings in the Senate and the House have enabled agricultural groups and others who have a stake in these negotiations to make their views and interests known.

Both the Chile and Singapore agreements passed the other body last week by a substantial margin. It is now time for the Senate to approve the agreements.

The U.S./Chile agreement provides important new opportunities for America's farmers and ranchers. Chile is a market of more than 15 million people with an open and progressive economy. Both the European Union and Canada already have free trade agreements with Chile.

Our negotiators were successful in their efforts to eliminate duties on more than three-quarters of American agricultural products within the first 4 years. The agreements also contain a safeguard provision which will help prevent surges in trade volumes. To discourage the use of nontariff barriers, a sanitary and phytosanitary working group will ensure that standards of inspection and food are based on sound science.

The U.S./Singapore agreement has the positive effects of freer and fairer trade and they make this agreement worthy of support as well. Singapore has become our 11th largest trading partner and provides the U.S. services sector with fair and immediate increase in market access.

I urge my colleagues to vote for both the Chile and Singapore free-trade agreements.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. KERRY. Mr. President, tonight the Senate passed implementing legislation for the Chile and Singapore Free Trade Agreements. These FTAs are comprehensive in nature and will serve well the interests of the United States. But they are not without flaws. I want the record to reflect my concerns and, more importantly, I want to make clear that I believe the direction the Bush administration is taking in the on-going negotiations over the Central American Free Trade Agreement and the Free Trade Agreement of the Americas is unacceptable.

Chile is an excellent candidate for a free trade agreement. It has one of the fastest growing economies in the world. The agreement the Senate has passed tonight should facilitate a general expansion of American exports, particularly in electronics and transportation equipment industries. This will create good work and good jobs here in America. More broadly, Chile is the first Latin American country to join in a free trade agreement with the United States, and that will allow the United States to more directly support economic and social reform in Latin America and will serve as a major stepping stone for enhanced hemispheric trade and job growth here at home.

Singapore is also an excellent candidate. Singapore is our 12th largest export market. The country provides a critical link between the United States and South East Asia and Singapore is the second largest Asian investor in the United States after Japan. Although the economic effects of the Singapore agreement are not likely to be great, this FTA would add a formal economic link to our significant security relationship with Singapore. It is an agreement that will ultimately build greater trade and create jobs here in America.

Chile and Singapore both have laudable records in financial regulation and transparency and have demonstrated a commitment to fundamental worker protections. For example, Chile has adopted several international labor rights conventions. The United States, by contrast, has adopted only two. The performance of these two countries in these areas, and their status as models of reform in their respective regions, make these trade agreements desirable. That is not to say these nations are not without problems or that further improvement is not needed. It is to make clear that these nations have made progress, are striving to improve, and that these agreements will only help them develop and enforce more advanced policies. And more importantly, these agreements will not put American workers at risk of unfair competition.

But, as I have said, there are flaws with these agreements. Over the past decade, the treatment of labor and environmental issues in trade agreements has evolved both in emphasis and enforcement. NAFTA represents an early stage in this evolution, addressing labor and environmental issues in the context of the agreement, albeit in side accords. The United States-Jordan Free Trade Agreement was the first FTA to include labor provisions in the actual text of the agreement and to subject those provisions to the same dispute settlement procedure as all other elements of the agreement.

Although the Chile and Singapore agreements should be the next step forward in this evolution towards strong and effectively enforced labor and environmental standards, they are in fact a step back. Unlike the United States-Jordan FTA, the only labor provision subject to dispute settlement is the requirement that each trading partner enforce its existing labor laws.

In addition, the Bush administration, specifically the United States Trade Representative, included provisions in this agreement related to immigration policy. The result is that America will allow the temporary entry of more than 6,000 foreign professionals for employment. This is not wise economic policy in good times and it is only worse economic policy in our current recession. Further, it amends unrelated immigration law, and I believe the Bush administration has abused fast track authority in doing so.

The final point I want to make this evening is, in my view, the most important. The Bush administration has made clear that it plans to use the Chile and Singapore FTAs as models or templates for future trade negotiations. I feel strongly that future negotiations must reflect the particular concerns and uniqueness of each trading partner. This seems obvious, but those who follow trade negotiations have warned that the Bush administration may claim that the standards of the Chile and Singapore agreements are universally applicable and, in particular, should apply to CAFTA and FTAA. Let me be as direct as possible: If the CAFTA and FTAA agreements do not include labor and environmental protections that are far, far stronger than the Chile and Singapore agreements I will oppose them as strenuously as I can.

The administration's one-size-fits-all approach will not work. Many of the nations considering inclusion in CAFTA and FTAA have no or low standards to protect workers and the environment and enforcement is nonexistent in some areas. Worker and environmental protections in the group of six Central American countries participating in CAFTA are not comparable to those in Singapore and Chile, for example. Some have not enacted or do not enforce basic labor standards that we take for granted, including bans on child and forced labor, non-discrimination and the right of workers to associate and bargain collectively. In Nicaragua and Guatemala employees cannot strike against poor working conditions, pay and benefits without government approval. And it is common for workers seeking better conditions to be physically intimidated and abused.

In CAFTA, the Bush administration is running a race to the bottom. Even basic rights, like the right to be protected from physical violence, are cast

aside in the name of business profit. That is a policy that exploits not only the people of these Central American nations, but Americans as well. It exploits American workers who are forced to compete hopelessly against companies that abide by no rules whatsoever.

Consistent with my long held views on trade, I have made the decision to do what I can to force a change of course in the CAFTA and FTAA negotiations, to ensure that those agreements enshrine, within the four corners of the agreement and with equal standing, specific labor and environmental protections that are fully enforced. I will accept no less. For example, fundamental labor standards like the right of association, the right to collectively bargain, prohibitions against child and forced labor, prohibitions against discrimination and other basic rights must be included. And these provisions must be subject to the same dispute settlement procedure as all other elements of the agreement.

I believe that trade is good for America, for our working families and for the international community. A race to the bottom—trade without rules—the sort of trade policy the Bush administration is pursuing in CAFTA and FTAA is not good for America, our workers or the international community, and I will oppose it.●

Mrs. CLINTON. Mr. President, today the Senate will vote on the Singapore and Chile free-trade agreements. Because I believe that these agreements will benefit New York and will lead to greater economic opportunities for New York companies, I will vote in support of these agreements.

Both the Singapore and Chile free-trade agreements promise to offer new opportunities for United States banks, insurance, securities and related services. These sectors are a critical part of New York's economy. These agreements also include provisions that improve intellectual property protections and open the telecommunications markets in both of these nations.

I share the concerns raised by some of my colleagues regarding the immigration provisions in these agreements. As my colleagues have pointed out, trade agreements are not the place to rewrite our immigration laws. I will be supporting Senator LEAHY's legislation to deny fast-track procedures to trade agreements that include immigration provisions. As you know, I voted against granting Trade Promotion Authority to the President and I believe the inclusion of these immigration provisions provides an example of my concerns about providing the President with Trade Promotion Authority. Despite bipartisan concerns about these provisions, Trade Promotion Authority means that we are unable to fix it.

As for the labor provisions in each agreement, the Chile and Singapore free trade agreements include obligations for each nation to enforce their own domestic labor laws. I believe that a better model for labor provisions is the United States-Jordan Free Trade agreement which included enforceable provisions to uphold International Labor Organizations, ILO, core labor standards. I am concerned that we appear to be backing away from the United States-Jordan FTA model. The labor provisions in the Chile and Singapore agreements should not be used as a model for future trade agreements.

Despite my concerns over the immigration and labor provisions, I believe that, in the aggregate, New York will benefit more from having these agreements pass than if they failed. This vote should not be interpreted as a signal as to how I will vote on future trade agreements. Rather I will look at each agreement in its totality and measure the impact of each agreement on the New Yorkers that I am privileged to represent. Because I believe that passage of the Singapore and Chile free trade agreements will lead to more jobs and greater economic growth in industries that are an important part of New York's economy, I will vote in support of these agreements.

Mr. LEVIN. Mr. President, the bills before the Senate to implement the U.S.-Chile and U.S.-Singapore free-trade agreements are being considered under fast track procedures. This means debate is limited and amendments are not in order. Senators can only vote yes or no. I opposed fast track because we should not limit the ability of Congress to improve trade agreements which may not, as some in the past have not, represent the best interest of the American worker, American farmer, or U.S. industry.

Although the U.S. International Trade Commission found the impact of a FTA with Chile and Singapore would be minimal on the U.S. economy, the U.S.-Chile and the U.S.-Singapore free-trade agreements are widely considered likely to lead to more open markets. Singapore's market is currently quite open with respect to consumer and industrial goods and imposes no tariffs on most of these products. Any remaining tariffs will be eliminated upon entry into force of the agreement. Chile's tariffs average 6 percent and they will be eliminated quickly in the agreement. For example, 85 percent of consumer and industrial goods trade becomes duty free immediately upon the entry into force of the U.S.-Chile FTA, with most of the remaining tariffs eliminated within 4 years.

Of particular interest to U.S. auto makers is Chile's commitment to eliminate its domestic tax of 75 percent on luxury automobiles over 4 years. The United States also made significant gains in opening the service sector market in both countries.

These agreements do have shortcomings. For instance, they lack a requirement to strive to achieve the core ILO labor standards that were contained in the U.S.-Jordan FTA, and instead only require each nation to enforce its own laws. They also have separate dispute settlement rules that place arbitrary caps on the enforceability of the labor and environment provisions of the agreement. This is in contrast to the U.S.-Jordan FTA which treated all commitments in the agreement to identical dispute settlement mechanisms. However, the weaker labor and environment commitments and enforcement is not as great a concern as might otherwise be the case because the laws of Chile and Singapore essentially reflect core internationally recognized labor rights. Such language would be a concern, however, if contained in future agreements with countries with lesser labor and environmental standards.

Each trade agreement should be judged on its own merits. While the provisions for Chile and Singapore may be acceptable for Chile and Singapore, the language of these agreements would clearly not be acceptable for trade agreements with countries with weaker labor laws or environmental standards. The U.S.-Jordan agreement, with its stronger labor and environment commitments and enforcement provisions, is the more acceptable model for future agreements with countries with weaker standards.

Mr. BIDEN. Mr. President, international trade has always been an important part of the American economy. For the past half century and more, the United States has been a leader in expanding international trade, opening markets around the world to our products. I believe that on balance the evidence shows us that trade has supported economic growth here in the United States, and that trade has supported good jobs and good wages for American workers.

On paper, the simple, textbook logic of trade is clear—more open markets around the world mean more customers for our workers and companies, who can compete with anyone in the world. And open markets mean more choices and lower prices for American consumers—it makes their paychecks go further.

Trade complements and reinforces the great strength of the American economy—its ability to seize opportunities.

To lead the world in research, to be the first to develop new products and processes, we depend on our ability to move investments and manpower where they can do most good. Trade is the international face of that process, that has always been the key to the success of the American economy. But in the real world, where people live, things are not that simple.

Economists like to tell us how well markets work—other things being equal. But those ''other things'' are not always equal. Because trade, by reinforcing the basic process of economic growth and change, reinforces the shift of investment and jobs. So trade contributes to severe disruptions, as factories shut down, people lose jobs, communities decline. It may well be true

that the overall result is a more efficient, more productive, even wealthier nation.

But underneath those gains are the costs of economic change, costs that are just as real and just as much a result of trade as the benefits. The costs of coping with economic change are dumped on workers and their families, on the communities they live in. The benefits of trade often go to businesses and workers in other industries, in other parts of the country.

If the benefits of trade really do outweigh their costs, we should have the resources as a Nation to help those on the losing end, the ones who are paying the price so that our economy can become more productive. Recently, two important shifts have occurred in our trade negotiations. First, we are dealing with countries that more often than not lack the political rights and the legal structure to protect their workers and their environment.

Many of these countries don't have our strong tradition of organized labor, fighting and winning protections for wages and working conditions. Many of these countries don't have the organizations or the laws to protect their environment. We didn't, either, as we began to grow into the world's strongest economy over a century ago.

It took us time and a lot of struggle to learn those lessons.

There are still plenty of countries out there who have not learned them yet, countries that do not provide those protections that can raise living standards, standards that they cannot yet afford. Low-wage competition with our workers, with our higher living standards, can force American companies to cut costs wherever they can—and in the end, that often means cutting labor. That means families without breadwinners, communities without jobs.

Second, on top of the fact that we are now doing trade deals with a lot of countries that don't match up with us in terms of economic development, our trade deals now include a different, deeper level of integration.

We have gone beyond lower tariffs, and into areas that implicate a lot more of our own domestic laws—on issues like agricultural policy, intellectual property, even environmental and health regulations. This deeper integration in the international economy touches close to bone in a country like ours.

We want to be sure that we remain in control of those important political issues. This does not mean that we should stop trying to bring the benefits of markets and trade to American workers and consumers. But it does mean that we have to be increasingly careful with every new step we take in trade policy. The easy work is behind us.

Each step from here on has to be taken with a much closer look at the balance between risks and rewards. But these trade deals before us today do not show that kind of care. Chile and Singapore are good allies of ours, and I support more cooperation and exchange among our economies. They are not, in their living standards and level of development, all that different from us. They are not themselves the issue here, at least not for me.

But the trade agreements the Bush administration has negotiated with them are a step back from progress we have made, as recently as just a couple of years ago, in the Jordan Free Trade Agreement. For example, the Jordan agreement subjects any violation of labor protections to ''appropriate and commensurate'' action. And there is no cap on the penalty that could be imposed as a result of a dispute.

But the Chile agreement and the Singapore agreement provide recourse against a country only for a sustained failure to enforce its own labor and environmental laws. In the worst case, a country could chose to lower its labor and environmental protections, making it easier to avoid a dispute or a penalty, because it would make its own standards easier and cheaper to enforce. At the margin, that would put greater pressure on American firms to cut costs—and jobs.

In addition, in these two agreements there is a cap of $15 million a year on penalties for failure to live up to labor and environmental protections. And those fines are simply paid by the offending country to itself, supposedly to strengthen its commitment to the very standards that they have failed to live up to. I have some experience with crime and punishment, Mr. President, and I can't believe that is going to deter much bad behavior. If $15 million is the maximum fine, it is an incentive to commit more than $15 million worth of violations. You can do the math.

Again, Mr. President, it is not that these two nations raise a serious threat to American living standards. Trade with Chile and Singapore combined amounts to a fraction of 1 percent of our economy. Nor do I harbor any concerns that these countries will fail to live up to their end of the deal. The issue before us now is whether these deals—the first agreements accomplished under fast track negotiating authority—set an acceptable pattern for future, more extensive trade agreements, such as the planned Central American Free Trade Agreement or the Free Trade for the Americas.

These trade agreements fail to treat labor and environmental issues as seriously as commercial disputes, as our trade law now requires. This is the first test of what this administration has done with its fast track trade negotiating authority. Now is the time to hold them to the letter and the spirit of the legislation under which we in Congress granted that authority to this administration. Yet another problem with these agreements lies in the changes in immigration law—done without the participation of the Judiciary Committee.

Fast track for the specifics of trade deals is one thing; but trade deals should not undertake, outside of the legislative process, significant changes in immigration or any other policy. Thousands of new visas can be issued under these agreements—without any requirement to show specific skill shortages here in the U.S. Those immigration provisions usurp congressional legislative powers, and undercut jobs for Americans.

I expressed concerns about the future of trade negotiations when I did not support granting the President fast track negotiating authority last year. We need the strongest protection for our workers here at home, the strongest protection for environmental standards abroad. And we need to make sure that gains from more open trade are gains that all Americans share. In the last decade, up until just a few years ago, we had a growing economy, with strong job creation and wage growth. During that period, we accomplished a number of very significant trade negotiations, including NAFTA, and China's entry into the WTO, both of which I supported. Today, things are very different.

Since January of 2001 we are down 3.1 million private sector jobs, and still counting.

A growing national economy, with strong investment in new sectors, strong employment, and growing incomes, helps to protect American families from job shifts that come from technological changes. So do strong protections for workers to organize and earn fair wages. And so do pensions that are safe, health care that is accessible and affordable. And specific protections for workers directly affected by trade. If those things are in place, the benefits of trade can outweigh the costs. But right now, we can take none of those things for granted.

Under this administration, there is a concerted effort to erode pension protections, the 40-hour work week, and other core worker protections. Our economy is struggling through the worst drought in job creation since the Great Depression. To maintain our living standards, and to maintain political support for increased trade, our trade policy must first be based on strong growth and job creation at home. This administration has not demonstrated to me that they have a plan for economic growth and job creation, or a commitment to protect workers rights.

Without that plan, without that commitment, and because of the flaws in the agreements themselves, I cannot vote for them.

For me, Mr. President, the calculation is simple. If this administration can create one new job, if it can dig us out of the hole we are in—over 3 million jobs lost—trade deals might make more sense.

I challenge this administration to create just one new job—just one more

job than we had in January of 2001—before it brings another trade agreement for our approval.

Mr. JEFFORDS. Mr. President, I rise again today to reiterate my concerns with the Singapore and Chile Free Trade Agreements. Let me remind my colleagues that my concern with these agreements is not with the trade provisions that they contain, but with the changes to our immigration laws.

A vote in favor of these agreements is a vote against our un- and under-employed professional workers. A vote in favor of these agreements is a vote against congressional constitutional authority over immigration.

Let me repeat for my colleagues the numerous problems with the immigration provisions in these agreements:

Creation of entirely new categories of nonimmigrant visas for free trade professionals that do not mirror the requirements of our current H1–B program;

No requirement that H1–B dependent employers make attestations that they are seeking to recruit U.S. workers, and that they are not displacing U.S. workers;

No limit to the number of times that an individual is able to renew his or her visa, enabling the non-immigrant to remain in the United States on a permanent rather than temporary basis;

Only requires that the non-immigrant have knowledge that is ''specialized'' as opposed to the ''highly specialized'' knowledge demanded by the current H–1B law;

Requires, without a numerical limit, the entry of business people under categories that parallel three other current visa categories;

Requires the entry of their spouses and children so that they can join the foreign workers in the United States making the program even less of a temporary visa program;

Requires the entry of foreign workers on L–1 visas regardless of whether they are nationals of Singapore or Chile so long as the sponsoring corporation has an office in those countries;

Requires that the United States submit disputes about whether it should grant certain individuals entry to an international tribunal, not leaving that decision to the Department of Homeland Security.

Finally, and in my mind, most importantly, for all my colleagues, these changes to our immigration law are effectively beyond the reach of Congress to oversee or alter.

The Senate should be focusing today on legislation that will improve our education and job training services, not legislation that will increase the number of foreign workers in this country. We need to make a stand today for our professional workers and vote against these agreements.

Ms. SNOWE. Mr. President, I rise today in support of the pending Free Trade Agreements with Singapore and Chile. Congress has a constitutional obligation to formulate U.S. trade policy and through the oversight activity of the Finance Committee, and the active participation of the Congressional Oversight Group, this responsibility is being met.

I would like to take this opportunity to thank Chairman GRASSLEY for his leadership on the Finance Committee in ensuring that Congress is not on the sidelines in the trade debate, even under the fast-track procedures by which these agreements are negotiated and considered here on the Floor.

It is well known that I have opposed trade agreements in the past. I did so because I never felt that those agreements struck the proper balance between free and fair trade. Last year, I supported trade promotion authority for the President precisely because it did strike the appropriate balance, and because of this administration's commitment to aggressively enforce our trade laws so that American workers aren't undermined by unfair trade.

The two agreements before us today have made substantial progress towards meeting those concerns and they come not a moment too soon, as the success of our economy relies more than ever on fair and freer trade—U.S. exports accounted for one-quarter of U.S. economic growth over the past decade—nearly one in six manufactured products coming off the assembly line goes to a foreign customer and exports support 1 of every 5 manufacturing jobs.

Given these facts, it is an understandable concern that the U.S. has been party to only three Free Trade Agreements ever, while there are more than 130 worldwide. Since 1995, the WTO has been notified of 90 such agreements while the U.S. only reached one, the Jordan Free Trade Agreement. In contrast, the European Union has been particularly aggressive, having entered into 27 free trade agreements since 1990 and they are actively negotiating another 15.

Why should these facts raise concerns? Because every agreement made without us poses a threat to American jobs. Nowhere is this better exemplified than in Chile which signed a free trade agreement with Canada, Argentina and several other nations since 1997.

Since that time, the U.S. has lost one-quarter of Chile's import market, while nations entering into trade agreements more than captured our lost share. According to the National Association of Manufacturers, this resulted in the loss of more than $800 million in U.S. exports and 100,000 job opportunities.

In the three months since the EU-Chile agreement went into effect, the growth rate of EU exports has expanded 8.6 times as fast as U.S. exports to Chile. This represents a disturbing deterioration of the U.S. share of Chile's market. These numbers represent real jobs for U.S. manufacturers that need new markets for their goods to keep employees working and demonstrates the effect of the U.S. failing to move forward with the implementation of these market access agreements.

One industry especially affected was U.S. paper products, which accounted for 30 percent of Chile's imports but has since dropped to only 11 percent after the trade agreements were signed. The market access provisions of the U.S.-Chile FTA provide for the elimination of tariffs on all forest products immediately upon implementation of the agreement, eliminating the 6 percent import tariff on U.S. paper and wood products.

Chilean forest products exports, in contrast, already enjoy duty-free access to the U.S. market. Immediate tariff elimination will put U.S. suppliers on equal footing with Chilean producers and with competing suppliers of forest products from Canada and Mercosur countries, and the European Union.

Before the Canadian-Chile FTA went into effect, U.S. paper and paperboard exports to Chile amounted to 156,000 metric tons, with a value of $99 million and represented 30 percent of Chilean imports in 1997. However, U.S. exports were only 19,000 metric tons, with a value of $26 million, which represented just 8.3 percent of Chile's paper and paperboard imports last year. As a result of the tariff eliminations in this agreement, the U.S. paper industry will now be able to regain access to the Chilean market.

Chilean salmon has been a controversial issue in the past, but recent steps taken by both the Chilean salmon industry and the Maine salmon industry to work jointly on promoting the value of farm-raised salmon has alleviated this concern. The Maine salmon industry supports this agreement, which is monumental considering their past differences with Chile. I have heard from the Maine Aquaculture Association and Maine salmon producers like Heritage Salmon, which support this free trade agreement and look forward to future opportunities in the Chilean market. These two former rival industries have shown a deep understanding of how to evolve in the era of global trade.

Recognizing the potential effects on another industry in my state, USTR provided me with unequivocal assurances about its position on the unique concerns of rubber footwear, and New Balance has indicated to me that they are pleased that USTR has shown sufficient sensitivity to this industry in both the Chile and Singapore FTAs.

The rubber footwear section of the agreement provides for six annual reductions of 5 percent, followed by three of 10 percent and a final one of 40 percent. This nonlinear phaseout honors Ambassador Zoellick's commitment to me that the unique sensitivity of the rubber footwear industry would be reflected in agreements negotiated under Trade Promotion Authority.

Singapore represents Maine's second largest recipient of exports with almost $250 million in 2002, second only to our neighbor to the north. Most of these exports are from the strong semiconductor industry in Maine. I have been told by this industry in my own state that they look forward to the closer economic ties that will be formed under the U.S.-Singapore FTA.

I have also heard from The Baker Company in Sanford, ME, which is a manufacturer of state-of-the-art biological safety and research equipment whose 150 employees do everything from research and development, engineering, manufacturing and even sales from their headquarters in Sanford. The Baker Company represents just one of the many small manufacturers across America whose sales to Singapore will benefit from this agreement. Hopefully, the 135 percent growth in Maine exports to Singapore last year alone will continue under this FTA.

In addition, it is my hope that these agreements will offer new export opportunities for Maine agriculture. I have been told by Maine potato farmers and the Maine Farm Bureau that they support these agreements. While they would have preferred a more accelerated phase-out of some of the tariffs on agriculture exports to Chile, the industry hopes this agreement will allow Maine potatoes to regain some of their previous market-share in Chile that was lost after the Chilean FTA was signed with Canada.

As a result of these two agreements before us today, many industries stand to benefit, including the forest and paper, rubber footwear, salmon, lobster, agriculture, semiconductor, precision manufacturing, and electronic industries of my home state. Therefore, I am optimistic that these two agreements, based on this administration's comprehensive approach to FTA's, are sure to gain strong bipartisan support.

Under this administration, the U.S. approach to trade has greatly improved. However, I have several remaining concerns. While I am pleased by some of the steps taken by USTR to address the interests of small businesses, there is much more still to be done. In addition, while the improvements to Trade Adjustment Assistance have been welcome, I still believe we must address the needs of communities that have been negatively impacted by trade, so that retrained workers have new opportunities for employment.

I look forward to working with my colleagues to address these, and other, concerns and to continue our efforts to promote a U.S. trade policy that benefits all Americans.

Mr. CONRAD. Mr. President, I want to take a few moments to comment on the trade legislation we are considering and our trade policy more generally.

Let me start by saying that I intend to vote in favor of the implementing legislation for both the Singapore and Chile free-trade agreements. In both cases, the agreements will provide commercial benefits to the United States, removing barriers to the exports of our goods and services. Both Singapore and Chile have relatively advanced economies, with relatively strong environmental and labor protections, so the risk of American manufacturing jobs relocating to these countries is small. In short, Chile and Singapore are the sorts of partners we should be seeking out if we are going to negotiate free-trade agreements: partners who are chosen because they can provide complementary commercial opportunities, not partners who are chosen primarily for political, not economic, reasons.

In particular, the Chile Free-Trade Agreement will provide export opportunities for North Dakota agriculture. Ever since the idea of a Chile FTA was first broached more than a decade ago, I have insisted that any agreement must result in the removal of Chile's price bands that have served to limit our wheat exports. This FTA accomplishes that long-held goal. In addition, it levels the playing field with our leading competitor for export sales to Chile. Currently, Canadian wheat exports enter Chile tariff free, but U.S. exports face a 6 percent tariff. This agreement will eliminate the tariff disadvantage our wheat exports currently face and allow us to recapture Chilean export sales we have lost to Canada in recent years.

I would also like to comment briefly on the sugar provisions of the Chile FTA. These provisions were carefully crafted to ensure that Chile could not import sugar to meet its domestic needs and then export its entire domestic production to the United States. In particular, the agreement provides preferential tariff access to Chilean sugar only if and to the extent that Chile is a net exporter of specified sugar products. All other Chilean sugar will be subject to MFN tariff rates. During the Finance Committee's informal consideration of the implementing legislation, I posed a number of questions to Ambassador Zoellick to ensure that the Senate had a full understanding of how these provisions work.

However, important as these provisions are, they cannot serve as a model for other FTAs that the administration is negotiating or considering. Frankly, Chile is a tiny producer of sugar, and it is extremely unlikely that it will ever be a net exporter of any significance. But the same is not true for Australia, Central America, South Africa, or Thailand, all of which are being considered for FTAs. The Chile provisions, if they were included in these other agreements, would devastate our sugar industry.

U.S. producers are highly efficient, and U.S. consumers enjoy some of the lowest prices in the developed world. The fact is that sugar is one of the most distorted commodity markets in the world, with subsidies, protected markets and all sorts of nontariff, nontraditional barriers to free trade. Unless we address these issues on a global basis and eliminate these distortions, I fear that these FTAs will wipe out our efficient sugar industry to the benefit of less efficient, highly subsidized producers in other countries.

More generally, I am concerned that these FTA partners are being chosen primarily on the basis of political and foreign policy calculations rather than on the basis of potential economic benefit to this country. In my view, that is a profound mistake. There has been bipartisan agreement in the Congress that the top priority for U.S. trade policy should be leveling the playing field in agriculture. However, the administration's pursuit of these bilateral FTAs threatens to undermine that goal. Australia, Central America and Thailand are simply not going to be huge markets for U.S. agricultural goods. But imports of sensitive products from these countries could have a devastating impact on important U.S. agricultural commodities. Put simply, there is very little upside to these agreements for U.S. agriculture, and a lot of potential downside.

Moreover, to the extent we are investing significant resources in negotiating these bilateral FTAs, we are diverting resources away from the WTO agriculture negotiations, which should be our primary focus. Only by addressing the market access barriers and inequities in domestic support on a worldwide basis can we be sure that U.S. agriculture will achieve the level playing field and access to growing markets that it needs to thrive in the 21st century.

Finally, I share the concerns of many of my colleagues about the disappearance of U.S. manufacturing jobs and the hollowing out of our industrial base. As we look forward to trade negotiations with the low-wage nations of Central America and Thailand, we must tailor the labor provisions of these agreements to fit local conditions so that we do not allow exploitative conditions that give these countries an unfair advantage over U.S. businesses.

In conclusion, I support these agreements. They will provide modest economic benefits to our country. But they cannot and should not serve as one-size-fits-all models for future bilateral FTAs. Future agreements must be constructed very carefully, taking into account the strengths and weaknesses of our various trading partners, to ensure that they provide commercial benefits to U.S. agriculture, services, and manufacturing.

I ask unanimous consent to print the following information in the RECORD from questions I submitted to Ambassador Zoellick.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMBASSADOR ROBERT ZOELLICK RESPONSES TO QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR KENT CONRAD OF NORTH DAKOTA, SENATE FINANCE COMMITTEE, JULY 10, 2003

1. Chile Sugar Provisions. Ambassador Zoellick, as you well know, the details of

trade agreements are critically important. I want to have on the record an understanding of how the sugar provisions in the Chile agreement work, so I have a series of questions on this issue.

First, my general understanding is that this agreement gives Chile preferential access to the US sugar market, but only if and to the extent that Chile has a net trade surplus in sugar. Is that correct?

More specifically, my understanding is that the agreement defines a net trade surplus in sugar as total exports of sugar, sugar containing products and high fructose corn sweetener minus total imports of these products, except that Chilean imports of HFCS from the US don't count. Is that correct?

Third, my understanding is that unless Chile has a net trade surplus in sugar, Chile will not get any preferential access under the agreement, and not just during the 12 year phase in, but in perpetuity. Is that correct?

Fourth, my understanding is that if Chile does have a net trade surplus in sugar, the agreement gives Chile up to 2000 tons of duty free access immediately, gradually increasing to up to 3258 tons in year 11 of the agreement. Is that correct?

Fifth, to the extent that Chile's net trade surplus is less than the TRQ limit, my understanding is that Chile's duty free access would be limited to the amount of its trade surplus in sugar. Is that correct?

Sixth, my understanding is that the agreement gradually reduces the over quota duty to 0 over the 12 year phase in period. Is that correct?

Seventh, my understanding is that this preferential over quota duty rate would be limited by the amount of Chile's net trade surplus, and any imports above this would be subject to the MFN rate. Is that correct?

Finally, after the end of the 12-year transition period, my understanding is that Chile's duty free access to the US would be limited to the amount of its net trade surplus in sugar. Is that correct?

Response: With respect to trade is sugar and sugar-containing products (SCPs), we are pleased that we were able to reach agreement with Chile on provisions to address our industry's concern that the FTA not operate as a vehicle for the transshipment of sugar produced in third countries. Accordingly, each side agreed that its access to the other's market under the agreement will be limited to the amount of its net trade surplus in specified products.

Your understanding of these provisions is correct. To summarize:

During the transition period, Chile's duty-free access for specified sugar products and SCPs will be limited to the lesser of the specified in-quota quantity or the amount of Chile's net trade surplus. Chile's net trade surplus will be based on the difference between Chile's imports and exports of sugar. SCPs, and high fructose corn syrup (HFCS), not including imports of HFCS from the United States.

During the transition period, if Chile's net trade surplus exceeds the specified in-quota quantity, then a declining over-quota tariff will be applied on the amount by which the net trade surplus exceeds the specified in-quotas quantity.

After the transition period, Chile's duty-free access will be limited to the amount of its net trade surplus.

During and after the transition period, any imports in excess of Chile's net trade surplus would be subject to our prevailing normal trade relations/most-favored-nation tariff rate.

Implications for Other FTAs. Ambassador Zoellick, I would also like to raise a concern I have regarding the implication of these sugar provisions for the other FTAs that are being negotiated. Frankly, Chile is a tiny producer of sugar, and it is extremely unlikely that it will ever be a net exporter of any significance. But the same is not true of Australia, Central America, South Africa, or Thailand, all of which are being considered for FTAs. The Chile provisions, if they were included in these other agreements, would devastate our sugar industry.

U.S. producers are highly efficient, and U.S. consumers enjoy some of the lowest prices in the developed world. The fact is that sugar is one of the most distorted commodity markets in the world, with subsidies, protected markets and all sorts of non-tariff, non-traditional barriers to free trade. Unless we address these issues on a global basis and eliminate these distortions, I fear that these FTAs will wipe out our efficient sugar industry to the benefit of less efficient, highly subsidized producers in other countries. Can you assure me that you do not intend to just take the Chile provisions and apply them to these other countries but will instead look to some other approach that takes into account the amounts of sugar these countries are capable of exporting into our country?

Response: As reflected in the outcome of the Chile negotiations, we are sensitive to our industry's concerns. We recognize that each negotiating partner has a different capacity for trade in sugar, and we will continue to consult with our industry and Congress as we move forward in our other negotiations. We also remain strongly committed to addressing global distortions that affect sugar trade in the WTO negotiations, and we will continue to consult closely with Congress and the sugar industry on these issues.

Mr. THOMAS. Mr. President, as the world's largest trading Nation, trade is key to the long-term economic growth of the United States. Nearly, 26 percent of the United States' gross domestic product is directly tied to trade activity. One in three acres is planted for export to other nations and mare than four out of ten products manufactured in the United States are exported.

The United States needs to foster strong trading relationships to create opportunities for domestic businesses and entrepreneurs. As chairman of the Subcommittee on International Trade, I heard from manufacturers, ranchers, and financial service companies on the importance of opening new markets to U.S. goods and services. The agreements we are considering today represent two opportunities we cannot afford to let pass by.

Since 1997, exports from the United to Chile have fallen from 24 percent to just under 17 percent. Exports from countries with trade agreements with Chile have risen during the same time period from 25 percent to 34 percent. Manufacturers and farmers in the United States have already lost one-third of the Chilean import market to countries with trade agreements with Chile. The National Association of Manufacturers estimates that the current lack of a trade agreement with Chile costs exporters, $800 million per year in lost sales, affecting 10,000 jobs in the United States. We must act now to reverse this trend.

Upon passage of the Chile agreement, more than 85 percent of consumer and industrial products will immediately become duty-free, with most remaining tariffs eliminated within 4 years. More than three-quarters of farm goods from the United States will enter Chile tariff free within 4 years with all tariffs phased out within 12 years.

The Singapore trade agreement will provide similar benefits to United States businesses. Singapore is America's twelfth largest trading partner, with annual two-way trade of goods and services of more than $30 billion. After the agreement goes into effect, all exports from the United States to Singapore will enjoy zero tariffs. The agreement will also guarantee fair and non-discriminatory treatment and greater market access for United States firms into Singapore's financial and services industry.

Expansion of trade opportunities for businesses and industry in the United States is good for our Nation. These agreements create new access opportunities for goods and services from the United States. They are good for our ranchers and farmers, and I support passage of the United States-Singapore, and the United States-Chile trade legislation.

Mr. DURBIN. I support the Singapore and Chile Free Trade Agreements. I maintain reservations about certain sections of this agreement, but overall I believe that this Free Trade Agreement succeeds in lowering tariffs on American goods entering Chile and Singapore.

We are deciding today whether or not to allow American farmers, manufacturers, businessmen and women to trade their products, their ideas and their goods.

Expanding trade goes hand in glove with disseminating and distributing the values of America. That is why I have supported many trade agreements.

The United States-Singapore and United States-Chile Free Trade Agreements, FTA, include strong and comprehensive commitments by Singapore and Chile to open their goods, agricultural and services markets to U.S. producers. The agreements include commitments that will increase regulatory transparency and act to the benefit of U.S. workers, investors, intellectual property holders, business and consumers.

These agreements have one of the highest levels of intellectual property rights protections that we have ever had in any trade agreement with any other nation. We are concerned about the rights of those who create music, entertainment, software, and technology products, and we are concerned about manufacturers' patents.

I am particularly pleased about the benefits this agreement provides with respect to agriculture. The Chile Free Trade Agreement will eliminate tariffs on 85 percent of the U.S. exports to Chile immediately. Under the United States-Chile Free Trade Agreement, American workers, consumers, businesses, and farmers will enjoy preferential access to a small but fast-

growing economy, enabling trade with no tariffs and under streamlined customs procedures.

This is good news for my home state of Illinois as over 75 percent of U.S. farm goods, including pork, beef, wheat, soybeans, feed grains, and potatoes will enter Chile duty-free within 4 years. Other duties on U.S. agriculture products will be phased out over 12 years.

In addition, an agreement was worked out with Singapore and U.S. trade negotiators on allowing chewing gum into the country. This is beneficial for Illinois because the government will only allow two brands of gum, both produced by Wrigley.

While some of the provisions in these FTAs could serve as a model for other agreements, a number of provisions clearly cannot be, nor should they be. I believe that each country or countries with whom we negotiate are unique; and while the provisions contained in the Chile and Singapore FTAs work for Chile and Singapore, they may not be appropriate for FTAs with other countries, where there may exist very different circumstances.

I have concerns that the administration may use some of the provisions contained in the agreements as models for other FTAs, such as the Central America Free Trade Agreement, CAFTA, where the conditions may make it inappropriate to do so. Specifically, with regard to the labor and environmental provisions, there are separate dispute settlement rules that place arbitrary caps on the enforcement of those provisions. Moreover, these agreements contain an ''enforce your own laws'' standard for dealing with labor and environmental disputes. Many of us support Chile and Singapore Free Trade Agreements not only because they have decent labor laws, but because they have the ability and willingness to enforce them.

Concerns about labor and environmental standards, however, should receive careful scrutiny on a case-by-case basis as different circumstances and situations warrant. Use of the ''enforce your own law'' standard is invalid as a precedent—indeed is a contradiction to the purpose of promoting enforceable core labor standards—when a country's laws clearly do not reflect international standards and when there is a history, not only of non-enforcement, but of a hostile environment towards the rights of workers to organize and bargain collectively. Using a standard in totally different circumstances will lead to totally different results.

My vote for the Chile and Singapore FTA's should not be interpreted as support for using these agreements as a model for future trade negotiations. I will evaluate all future trade agreements on their merits and their applicability to each country to ensure that core international labor rights and environmental standards are addressed in a meaningful manner. Expanded trade is important to this country and the world; but it will be beneficial to a broad range of persons in our nation and in other nations only if these trade agreements are carefully shaped to include basic standards, including the requirement that nations compete on the basis of core rights for their workers, not by suppression of these basic rights.

I support the promotion of free trade, but I join my colleagues on both sides of the aisle in expressing concern that the Administration is mandating immigration policy that is the purview of Congress. This should never happen again. The United States Trade Representative, USTR, should not be creating new immigration strategies. While I support the free trade agreements with Chile and Singapore, I want to convey to USTR that I will look long and hard at any free trade agreements that include similar immigration provisions in the future.

Mr. LEAHY. Mr. President, I will vote in favor of the Free Trade Agreements with Chile and Singapore because the benefits of the intellectual property and anti-piracy provisions in these agreements outweigh the valid concerns that have been raised about the inclusion of immigration provisions.

At the outset, let me begin by expressing my disappointment that the administration short-circuited the proper consideration process for these implementing bills through its decision to transmit them to Congress 2 days before the Judiciary Committee's scheduled debate, and before responding to written questions from this committee's members. To be fair, the administration did eventually respond to these questions. Of course, as the responses themselves pointed out, ''the implementing bill cannot be modified after its introduction.''

The administration apparently views the Judiciary Committee simply as an obstacle to be overcome as quickly as possible, and not as a source for possible improvements to its legislative proposals. As a result of the administration's undue haste—and the Judiciary Committee's failure to begin consideration of these measures early enough to guarantee that it could have meaningful input—we were deprived of the opportunity to propose changes in the implementing legislation. Instead, we were required to conduct an up-or-down vote on final passage of these implementing bills only 2 days after their introduction.

I share the concerns expressed by Senators FEINSTEIN, LINDSEY GRAHAM, and SESSIONS that the U.S. Trade Representative should not be in the business of amending domestic immigration laws, as these treaties do. The decision to include immigration provisions was not only unauthorized by Congress but also unnecessary to achieve the administration's stated goals. Congress has already created the H–1B program, which allows foreign workers with specialized skills to work in the United States. That program was established after a lengthy process of public hearings, debate, and negotiation. If the administration feels that program needs to be changed, or a new visa category created, it should have sought to do so through the ordinary legislative process.

This matter is of particular concern because these agreements are widely viewed as the template for future trade agreements, many of which are being negotiated as we speak. I hope that the administration has gotten the message from members on both sides of the aisle and both chambers that Congress does not intend to delegate its power over our immigration system to the executive branch. I for one believe that we should do more than express our concerns and hope that they are heeded. As a result, I have introduced the Congressional Responsibility for Immigration Act, a bill to prevent the use of fast-track procedures for trade agreements that include immigration provisions.

On the whole, however, I support these agreements because they recognize that intellectual property, and our response to international piracy in particular, is an integral part of any trade structure. The United States is the world's leading creator and exporter of intellectual property. That means we are also the world's leading target for piracy of copyrighted works. New technology has made piracy cheap and easy, and everything from music to films to books is susceptible to this kind of theft. At the same time, the advent of new technologies means that international distribution of copyrighted works is increasingly viable, and necessary, if the U.S. intellectual property industry is to continue to thrive.

These agreements go a long way to harmonize the intellectual property laws of Singapore and Chile with those of the United States. They make IP systems in each country more transparent, uniform and predictable. This is a significant benefit to U.S. industries that depend on transparency and predictability in order to be able to protect their rights in these countries. The agreements also call on the countries to recognize and uphold the rights of authors to control the electronic dissemination of their works, and to protect the encryption technology that safeguards such electronic dissemination. This too is important, because more and more intellectual property is being distributed electronically. If intellectual property holders cannot securely distribute their works in electronic form, a major source of revenue is lost, and American creativity is hampered.

Intellectual property is increasingly an international business, one that needs an international approach to many of its problems. Despite my concerns about the immigration provisions in these agreements, I will support their passage because they improve

international cooperation on intellectual property issues.

Mr. CHAFEE. Mr. President, today the Senate takes up legislation to implement important free trade agreements with Chile and Singapore. Through the tireless efforts of President Bush's forward-looking Trade Representative Robert Zoellick, the U.S. has signed trade pacts that will strengthen relations with two of our best friends worldwide: Chile and Singapore. Congress ought to do our part so the people of all three nations can realize the benefits of these agreements. I commend President Bush and Ambassador Zoellick their hard work in negotiating these agreements, and for upholding the principle that economic engagement worldwide works for the betterment of all the world's people.

Like most of our friends and neighbors throughout the world, the United States faces serious economic challenges, particularly as we strive to work our way out of a period of recession and growing budget deficits. One means, and certainly not the only one, of strengthening our own economy while lifting others around the world, is to lower trade barriers and open markets. The promotion of free trade has characterized economic relations among the nations of the world during recent years. Our competitors in Europe, Asia and Latin America have sealed deals on about one hundred and thirty preferential trade compacts, some within our own hemisphere.

Yet the U.S. is party to only three of these agreements—NAFTA and respective free trade agreements with Israel and Jordan. I was astounded to learn that the European Union now exports more to South America than the United States. Congress would do the American people an injustice if we allowed the U.S. to continue to be left behind as the force of free trade go on benefiting others around the world.

Free trade, rather than imposing U.S. values and robbing peoples of their culture, creates new economic opportunities and helps raise the standard of living for millions of people. Our experience with NAFTA, for example, shows how profoundly this agreement has boosted exports and created jobs. Indeed, U.S. merchandise exports to Mexico were up almost 170 percent in NAFTA's first eight years, well above the overall U.S. increase. For Mexico, the news is also positive, as the NAFTA-related export boom was responsible for more than half the 3.5 million jobs created there since 1995.

Free trade is also a successful poverty reduction tool. Consider this: since 1987, 140 million people in the trade-dependent economies of East Asia have been removed from he ranks of abject poverty. On the other hand, economically isolated South Asia and much of Africa experienced an increase in poverty during the 1990s.

But the economic potential of regional and bilateral free trade agreements tell only part of the story. It is my view that strengthening economic bonds between the U.S. and developing nations will concurrently strengthen and encourage the forces of political reform as well.

The experience of Mexico is illustrative. Most observers give at least some credit to NAFTA for encouraging Mexico's political maturity, which saw the peaceful replacement of a political party that had a 70-year lock on that nation's presidency. Future free trade initiatives in Asia, Latin America and the Middle East could encourage the kind of dramatic political gains that, in recent decades, have transformed many of the world's nations from authoritarian regimes into functioning democracies.

Trade in goods and services between Chile and the U.S. is growing and today amounts to more than $8 billion. Under this FTA with Chile, more than 85 percent of bilateral trade in consumer and industrial products becomes tariff-free immediately, with most remaining tariffs eliminated within four years. Enactment of this agreement will improve an already strong U.S. relationship with a nation that has overcome a legacy of political division. Chile's military coup and resulting dictatorship in the 1970s and 1980s has today been replaced by a functioning, outward-looking democracy. And it is not surprising that Chile's commitment to free trade has taken place concurrently with its political reconciliation and growth.

The Singapore free trade agreement is the first U.S. FTA with an Asian nation and could spur future similar initiatives in that important region of the world. It will strengthen an already strong economic relationship with America's 12th largest trading partner by guaranteeing zero tariffs immediately on all U.S. goods entering Singapore. The $40 billion in two-way trade in goods and services between the U.S. and Singapore will surely increase through this FTA.

And both of these agreements do far more than simply encourage additional free trade. Like our free trade agreement with Jordan, these agreements with Chile and Singapore include strong provisions related to labor and the environment. Under them, all three countries agree to: One, support International Labor Organization (ILO) core labor standards and internationally recognized worker's rights and, two, effectively enforce their own labor laws in the trade-related matters. Penalties for violations are $15 million annually, with failure to pay leading potentially to suspension of benefits.

These agreements also do not forget the need to ensure protection of the environment. Under them, parties are to ensure that their domestic environmental laws provide for high levels of environmental protection and are effectively enforced. Parties must also strive to continue to improve their environmental laws. Finally, the agreements make clear that it is inappropriate to weaken or reduce domestic environmental protections in order to encourage trade or investment. These environmental provisions are not just words: they are obligations enforced through each agreement's dispute settlement procedures.

Approval of these two FTAs today is an important early step in implementing a bold free-trade agenda. Other such agreements with a great many other nations are either being negotiated or are under consideration. I am hopeful that today's strong vote in Congress will encourage increased U.S. economic engagement and bring about additional market-opening, job-creating free trade agreements. I urge all of my colleagues to support this much needed legislation.

UNITED STATES-SINGAPORE FREE TRADE AGREEMENT IMPLEMENTATION ACT

The PRESIDING OFFICER. Under the previous order, the clerk will report H.R. 2739.

The legislative clerk read as follows:

A bill (H.R. 2739) to implement the United States-Singapore Free Trade Agreement.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, I ask unanimous consent that the next votes in the sequence be limited to 10-minute votes; further, that it be in order to ask for the yeas and nays on passage of the next two bills with one show of hands.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. I now ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second?

The yeas and nays are ordered on both measures.

Under the previous order, all time is yielded back. The clerk will read the bill for the third time.

The bill was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 66, nays 32, as follows:

[Rollcall Vote No. 318 Leg.]

YEAS—66

Alexander	Bennett	Bunning
Allard	Bingaman	Burns
Allen	Bond	Campbell
Baucus	Breaux	Cantwell
Bayh	Brownback	Carper

Chafee	Gregg	Nelson (NE)
Clinton	Hagel	Nickles
Cochran	Hatch	Pryor
Coleman	Hutchison	Roberts
Collins	Inhofe	Rockefeller
Conrad	Kyl	Santorum
Cornyn	Landrieu	Schumer
Daschle	Leahy	Sessions
DeWine	Levin	Smith
Domenici	Lincoln	Snowe
Durbin	Lott	Stabenow
Ensign	Lugar	Stevens
Enzi	McCain	Sununu
Fitzgerald	McConnell	Talent
Frist	Murkowski	Thomas
Graham (FL)	Murray	Voinovich
Grassley	Nelson (FL)	Warner

NAYS—32

Akaka	Dorgan	Kohl
Biden	Edwards	Lautenberg
Boxer	Feingold	Mikulski
Byrd	Feinstein	Miller
Chambliss	Graham (SC)	Reed
Corzine	Harkin	Reid
Craig	Hollings	Sarbanes
Crapo	Inouye	Shelby
Dayton	Jeffords	Specter
Dodd	Johnson	Wyden
Dole	Kennedy	

NOT VOTING—2

Kerry Lieberman

The bill (H.R. 2739) was passed.

UNITED STATES-SINGAPORE FREE TRADE AGREEMENT IMPLEMENTATION ACT AND THE UNITED STATES-CHILE FREE TRADE AGREEMENT IMPLEMENTATION ACT

Mr. BREAUX. Mr. President, I strongly support the Singapore and Chile Free Trade Agreements and believe they will promote domestic growth in manufacturing and exports. I look forward to seeing these agreements enacted into law. However, I am concerned about the current U.S. negotiating objective of restricting, limiting or otherwise eliminating drawback and duty deferral rights for U.S. manufacturers and exporters in free trade agreements, FTA. The administration's current policy places U.S. companies at a significant competitive disadvantage in the global market.

Free trade agreements should include no language that eliminates or otherwise restricts the application of duty drawback and duty deferral programs to U.S. manufacturers and exporters. The language in the United States-Singapore and United States-Israel FTAs, for example, have no such restrictive language and we should model future agreements after these FTAs. This issue is of significant importance to many U.S. manufacturers and exporters, including those in my home state of Louisiana.

Duty drawback and duty deferral programs reduce production and operating costs by allowing our manufacturers and exporters to recover duties that were paid on imported materials when the same or similar materials are exported either whole or as a component part of a finished product. Duty drawback positively affects nearly $16 billion of U.S. exports each year. Additionally, nearly 300,000 U.S. jobs are directly related to exported goods that benefit from drawback, and these high quality jobs could be adversely affected by eliminating or restricting drawback. In my own home state of Louisiana, drawback and duty deferral programs provide substantial benefits to local industries, allowing them to compete on a level playing field in the global market.

Drawback makes a significant difference to U.S. companies at the margin when exporting to our FTA partners where they compete against foreign producers that either have substantially lower costs of production or enjoy low or zero import duty rates. This export promotion program is one of the last WTO-sanctioned programs' which provides a substantial advantage to U.S. companies participating in the export market. The application of these programs to U.S. manufactures and exporters should not be restricted in future free trade agreements that we negotiate with our trading partners.

We need to work hard to complete free trade agreements that provide as many competitive advantages as we can to U.S. manufacturers competing in the global market, encourage growth in U.S. exports, and create U.S. jobs.

Mr. KOHL. Mr. President, I rise today to explain my opposition to the Chile and Singapore Free Trade Agreements. As a former businessman, I understand that trade has always been an important part of our economy. American workers are so productive that access to foreign markets is key to their prosperity. Last year alone the State of Wisconsin exported $10.6 billion worth of goods around the world. Unfortunately, because the Administration chose to abuse the fast track process and include unrelated immigration issues in these agreements, I was not able to support these agreements.

My opposition to these agreements is not based on the tariff reductions and market access measures included in the bills. Agreements between the U.S. and these countries make good economic sense. Canada and Europe already have free trade agreements with Chile and it has hurt our access to that market. While U.S. products face a 10 percent tariff, the same products from other countries do not. In Wisconsin we sell large mining equipment and bulldozers to Chile, but since 2000 our sales of mining equipment has tailed off. There may be many reasons for this reduction in commerce, but the fact that we face a 10 percent tariff, while our competitors from Europe do not, is not helping. This agreement will go far toward giving U.S. companies a fair and even playing field.

That said, our trade policy with other countries has been far from an unqualified success. Since 2000 Wisconsin has lost 70,000 manufacturing jobs. Almost one out of every eight jobs in the state in manufacturing has disappeared. Some of this job loss is a result of the recession. Some of these jobs have been moved to Mexico, and some of these have been unable to compete with low wages in China. Most damaging, however, may be the currency manipulation of the Chinese Government. Some experts believe the Chinese may be artificially keeping their currency undervalued by as much as 50 percent. This means products from China are 50 percent cheaper than they would normally be. This is on top of low wages and almost no environmental regulations, which also work to depress prices.

Trade can only work when countries obey the rules and follow the law. I supported bringing China into the WTO because that would make it harder for them to cheat on their agreements. However, this administration has proven unwilling to press this currency issue with the Chinese. They have allowed the problem to fester unchecked, and our manufacturing base is paying the price.

The agreements before us now, however, are not with countries that have a history of avoiding their commitments, or that do not enforce their labor laws, or with countries that are ruled by dictatorships. Singapore and Chile are responsible democracies with solid labor laws and labor unions. In the case of Singapore, the wage rates are comparable, although not the same, as the United States. Chile and Singapore have little in common with China, and should not be painted with the same broad brush. These countries also represent a significantly smaller portion of our foreign trade. Singapore represents 1.7 percent, and Chile represents 0.3 percent of total U.S. Trade, exports and imports combined and opening our market to them will have much less impact on our economy than our opening to China.

Many have criticized these agreements because the labor provisions attached to the agreement are not strong enough. A recent United States-Jordan Free Trade Agreement had much stronger labor provisions than the agreements before us now. That agreement had real accountability and real consequences if Jordan failed to keep up its side of the bargain. The administration argues that Chile and Singapore have responsible laws that are adequately enforced, and so do not need the highly prescriptive language that was included in the Jordan agreement. I agree with their arguments.

Let me be clear about the following. While these labor provisions may be adequate for Chile and Singapore, countries with good records, they should not be used as a model for future multilateral agreements in the region. The Free Trade Area of the Americas, and the Central American Free Trade Agreement will need substantially stricter labor and environmental provisions than these to get my vote. Large multilateral agreements with countries that are only fledgling democracies and have poor records of protecting workers cannot be treated in the same manner as Chile and Singapore.

Even though these agreements had problems and were not perfect, I was inclined to support them because I generally vote to support free trade. I felt these countries would be good partners and these agreements would be unlikely to have any significant negative impact on our economy. But the administration pushed the envelope of fast track too far when immigration provisions were included in the implementing legislation.

Both trade agreements contain provisions which create a new visa category for the temporary entry of business professionals. These provisions were negotiated as part of the larger trade agreement by the United States Trade Representative, USTR, which has no specific authority to implement new visa categories or make modifications to our temporary entry system. Further, these provisions were negotiated without the direction of Congress, which has traditionally debated and decided upon our Nation's immigration policy. These actions by the USTR set a dangerous precedent for immigration policy to be negotiated behind closed doors without a complete debate. Both our Nation's security and its diversity depend on well-considered immigration policy.

Second, the administration transmitted the implementing language for these trade agreements to the Senate before responding to concerns expressed at a Judiciary Committee hearing. This language is unamendable once transmitted, so it is critical that Congress be consulted fully on implementing language before transmission. Immigration policy lies squarely in the jurisdiction of the Judiciary Committee; for the administration to finalize immigration language before the Judiciary Committee has had a chance to analyze a draft and improve the language is an unacceptable way to do business.

These agreements I have decided to oppose will undoubtedly pass. Chile and Singapore have shown they are willing to play by the rules, and have democracies who will hold them accountable if they undermine their own labor and environmental laws. I expect there will be disputes in the future, there always are between partners, but Chile and Singapore will work with us to settle those disagreements when they come around. However, future agreements with countries with lower standards will have to do more to secure labor and environmental rights before I will support them. We need to move back toward the United States-Jordan model, back toward more accountability in trade agreements before this administration can expect my vote in favor of FTAA or CAFTA.

This undermining of the fast-track procedure, however, cannot be repeated. I voted for fast track, and support it as a way to give the President the ability to negotiate with other countries in good faith, but it should not be used for issues that are not trade related. Future agreements that carry unrelated provisions will not get my vote. I hope the administration hears this message and gets back to the business of focusing on our trade agenda, and leaving the immigration issues to the Congress where they belong.

Mr. VOINOVICH. Mr. President, I rise in strong support of S. Res. 211. I join my colleagues to speak out against the administration using these trade agreements to implement immigration policy without the authority or direction to do so from Congress. It is the function of the Congress to set policy on the immigration laws of this country, and in this case, the USTR overstepped its bounds. This resolution sends a message to the administration that the USTR has overreached its negotiative authority by including immigration provisions in the FTA, and in the future, they must consult with Congress before implementing new policy, and I strongly support it.

I am a strong free-trader whose State has benefited from free-trade agreements. I do have some concerns, however, about the enforcement of trade laws and I have expressed those concerns to the administration. Free trade must also be fair and I will continue to pay close attention to our trade agreements and their enforcement to make sure that American workers are not hurt by unfair trade.

Mr. CORZINE. Mr. President, I will vote against the free-trade agreements, and I want to take a few minutes to explain why.

Having spent many years in the financial world, I understand the tremendous value of trade to America and to nations around the world. Free and open trade can enhance prosperity, create jobs, and increase opportunity. That is why I supported the North American Free Trade Agreement before I came to the Senate. And it is why I supported the free-trade agreement with Jordan. Measures like these held the promise of greater economic growth to the benefit of citizens in all countries involved and represented a growing movement toward freer trade around the globe.

Yet in recent years, we have seen a serious deterioration of the trade situation here in the United States, and our Nation's trade deficit has grown dramatically. The current account deficit in the first quarter of this year increased to more than $136 billion, and many project that it will surpass $500 billion this year. That means that every day, we are being forced to borrow nearly $2 billion because of our trade imbalance. That is a serious problem, and it is simply unsustainable. Something is not right with our ability to export American goods and services, but particularly manufactured products.

Beyond the enormity of the trade deficit, American businesses increasingly are shipping jobs overseas. Not just low-skilled jobs, but professional, highly skilled and well paid jobs. That is one reason the so-called economic recovery touted by the Bush administration has widely been characterized as a jobless recovery. In fact, it is worse than a jobless recovery, it is a job-killing recovery. And while workers in this country are losing jobs, our trade policy is helping to create jobs overseas. Today, many American firms are outsourcing high-technology jobs to low-wage environments to the detriment of American workers.

Sadly, this troubling trend has not received enough attention here in Washington. It is a matter affecting millions of Americans who are looking for work—well-paying, upwardly mobile work. And, I believe, it requires a serious rethinking of our Nation's whole approach to trade.

Unfortunately, the trade agreements considered last night failed to address this problem, and I have many concerns about them.

For example, I am quite concerned about provisions in the agreements that effectively overturn U.S. immigration laws and allow thousands of foreigners to enter our country to take what will often be highly paid positions. These people will take jobs away from Americans who want them and need them. And it is especially disturbing that such a significant change in immigration laws is being included in a trade agreement. As I see it, immigration is the type of matter that deserves close attention here in the Congress, with a full opportunity for debate. It is not something that should be rammed through without any meaningful opportunity for amendment or public input.

I also am concerned about the inadequacy of the labor protections, included in thee agreements.

Mr. President, I supported the Jordan Free Trade Agreement in part because it recognized the importance of protecting worker rights. That agreement ensured that both nations adhere to internationally recognized worker protection standards, and that worker rights could be enforced. It also ensured that labor standards were subject to the same procedural protections as the other provisions of the agreement. The Chilean and Singapore agreements fail to meet that standard.

To the contrary, the labor protections in these agreements are not only much more narrowly defined—essentially dependent on the laws of the respective countries—but enforcement of those protections is much more limited, as well. For example, not all violations of labor laws could be enforced through the agreements—only those that are ''sustained.'' Also, there are strict limits on the amount of fines and sanctions that are authorized in the case of labor violations, unlike violations of other provisions in the agreement. This disparity in the treatment of labor and commercial violations, in my view is wrong.

Mr. President, I am concerned that the labor provisions in these agreements, and other similar provisions relating to environmental protection, will serve as a template for other trade agreements already under discussion. As I see it, the Administration would be making a serious mistake if it uses these provisions as a model for future agreements. I hope that will not happened.

Mr. President, the types of commercial, labor and environmental issues addressed in these agreements are critical to the future of our nation, our economy, and millions of American workers. Yet, again, we are debating these agreements under expedited procedures that allow for every little debate and no amendments. In effect, while jobs continue to be sent abroad and millions struggle unsuccessfully to find work, the American people are being shut out of the process. In my view, that is not the right way to conduct the people's business.

Mr. President, I recognize that these agreements have, in fact been approved. But I would urge my colleagues, before we continue along the same theme path as we develop other similar agreements, let us take a step back and rethink our nation's whole approach to trade, Something is seriously wrong when America is hemorrhaging dollors and hemorrhaging jobs. We need to change course. And continuing blindly with a failed approach would be a dereliction of our responsibility to protect America's economy and America's workers.

I look forward to working with all of my colleagues to address these issues in the months and years ahead.

UNITED STATES-CHILE FREE TRADE AGREEMENT IMPLEMENTATION ACT

The PRESIDING OFFICER. Under the previous order, the clerk will report H.R. 2738, an act to implement the United States-Chile Free Trade Agreement.

The legislative clerk read as follows:

A bill (H.R. 2738) to implement the United States-Chile Free Trade Agreement.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill (H.R. 2738) was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from New Mexico (Mr. DOMENICI) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The result was announced—yeas 66, nays 31, as follows:

[Rollcall No. 319 Leg.]

YEAS—66

Alexander	Daschle	McCain
Allard	DeWine	McConnell
Allen	Dole	Mikulski
Baucus	Durbin	Miller
Bayh	Ensign	Murray
Bennett	Enzi	Nelson (FL)
Bingaman	Fitzgerald	Nelson (NE)
Bond	Frist	Nickles
Breaux	Graham (FL)	Pryor
Brownback	Grassley	Roberts
Bunning	Gregg	Santorum
Burns	Hagel	Schumer
Campbell	Hatch	Sessions
Cantwell	Hutchison	Smith (OR)
Carper	Inhofe	Snowe
Chafee	Kyl	Specter
Clinton	Landrieu	Stabenow
Cochran	Leahy	Sununu
Coleman	Levin	Talent
Collins	Lincoln	Thomas
Conrad	Lott	Voinovich
Cornyn	Lugar	Warner

NAYS—31

Akaka	Edwards	Lautenberg
Biden	Feingold	Murkowski
Boxer	Feinstein	Reed (RI)
Byrd	Graham (SC)	Reid (NV)
Chambliss	Harkin	Rockefeller
Corzine	Hollings	Sarbanes
Craig	Inouye	Shelby
Crapo	Jeffords	Stevens
Dayton	Johnson	Wyden
Dodd	Kennedy	
Dorgan	Kohl	

NOT VOTING—3

Domenici	Kerry	Lieberman

The bill (H.R. 2738) was passed.

Mr. STEVENS. I move to reconsider the vote.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRASSLEY. Mr. President, today the Senate passed the United States-Chile and the United States-Singapore Free Trade Agreement Implementation Acts. This is the first time in our history that the Senate has approved two free trade agreements in a single day. The fact that we were able to achieve this goal is a testament not only to the high quality of these agreements, but also to the power of Trade Promotion Authority.

It was almost a year ago today that the House and Senate gave final approval to the conference report for the Trade Act of 2002. This historic piece of legislation empowered the President, for the first time in almost a decade, to negotiate free trade agreements utilizing Trade Promotion Authority procedures. Today, with the passage of these two agreements, we are using TPA to take some of our first steps toward re-engaging the world through international trade. It is a welcome development.

International trade has long been one of the most important foreign policy and economic tools in our Nation's arsenal. It was a key component of our post-World War II international economic strategy. For over 50 years international trade contributed to stability and economic growth throughout the world. It helped to lift the nations of Europe and Asia out of the ashes of World War II. And it helped America experience unprecedented prosperity here at home.

International trade can play a similar role at the beginning of the twenty-first century. That is part of what Trade Promotion Authority is all about. Trade Promotion Authority represents a partnership between the executive and legislative branches of government. It provides the President with Congressional support so he can negotiate the best trade agreements for America's workers. It provides certainty to our trading partners that any agreement reached will get timely consideration and will not be ripped apart by the U.S. Congress. In exchange for the authority to negotiate, Congress requires intense consultation and notification procedures. It provides a legislative check on the President's ability to negotiate. And it provides greater certainty to Congress that its intent is being followed. The success of these procedures can be seen by the strong support these two agreements enjoy today.

With our votes today we are locking in two strong trade agreements with our two strongest international trade allies, Chile and Singapore. With the passage of these agreements, we send a strong message to the world that the United States is back in the game.

These bills would not have been possible without the able assistance of many people. First, I want to acknowledge the leadership of President George W. Bush and our United States Trade Representative, Ambassador Robert Zoellick. Their stalwart commitment to expanding export opportunities for America's farmers and workers was a major factor in passing Trade Promotion Authority last year and in concluding these two agreements.

I would also like to take a moment to thank some of those individuals in the Senate who helped to make this historic day possible. First, I want to thank my colleagues on the Finance Committee, especially the Ranking Member, Mr. BAUCUS. Working together, we demonstrated that international trade is not a Republican or a Democratic issue, but rather an issue that works for all Americans.

Next, I would like to thank my Finance Committee staff who has worked hard over the summer to get the implementing bills drafted and the materials ready so that we could consider these agreements before the August recess. It was no easy task, and I appreciate their hard work and dedication.

First and foremost, I want to thank my Chief Counsel and Staff Director, Kolan Davis, whose ability to manage multiple legislative priorities is a key factor to the success of the Finance Committee's work. I also would like to thank my Chief International Trade Counsel, Everett Eissenstat, who successfully coordinated the efforts of the Finance Committee trade staff to enable us to move this legislation quickly. I also want to recognize the rest of my trade team, Carrie Clark, Zach Paulsen, David Johanson, Nova Daly, Stephen Schaefer and Cathy

McKinnell. This group sacrificed many long hours to bring these agreements to fruition. Without their hard work and dedication, our success today would not have been possible.

Mr. BAUCUS had a good staff helping him as well and I would like to take a moment and thank them for their efforts. I thank Senator BAUCUS' Staff Director, Jeff Forbes, and General Counsel, William Dauster. I also appreciate the work of his trade staff led by the Chief International Trade Counsel, Tim Punke, along with Shara Aranoff, John Gilliland, Brian Pomper and Lara Birkes.

A sincere thank you also must be given to Polly Craighill from the office of the Senate Legislative Counsel, for her patience and expertise in drafting this legislation. She is truly a valued part of this institution, and her knowledge of the law and devotion to task is without equal.

We can all be proud of today's accomplishments. I look forward to President Bush signing these two bills into law.

TEMPORARY ENTRY PROVISIONS IN THE CHILE AND SINGAPORE FREE TRADE AGREEMENTS

The PRESIDING OFFICER. Under the previous order, S. Res. 211 regarding immigration provisions is agreed to, the preamble is agreed to, and the motions to reconsider are laid on the table, en bloc.

The resolution (S. Res. 211) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 211

Whereas the transmittal of the legislation implementing the Chile and Singapore Free Trade Agreements to the Senate on July 15, 2003, was preceded by debate over whether temporary entry provisions in both the underlying language of the Chile and Singapore Free Trade Agreements and in the implementing legislation should be included;

Whereas article I, section 8, clause 3 of the Constitution authorizes Congress ''to regulate Commerce with foreign Nations, and among the several States'', and article I, section 8, clause 4 of the Constitution provides that Congress shall have power to ''establish an uniform Rule of Naturalization'';

Whereas the Supreme Court has long interpreted these provisions of the Constitution to grant Congress plenary power over immigration policy;

Whereas members of the Senate often disagree about immigration policy, but agree that the formulation of immigration policy belongs to Congress; and

Whereas the practice of negotiating temporary entry provisions in the context of bilateral or multilateral trade agreements curtails the ability of Congress to regulate the Nation's immigration policies, including the admission of foreign nationals: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) trade agreements are not the appropriate vehicle for enacting immigration-related laws or modifying current immigration policy; and

(2) future trade agreements to which the United States is a party and the legislation implementing the agreements should not contain immigration-related provisions.

The PRESIDING OFFICER. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. FRIST. Mr. President, I ask unanimous consent that the pending motion and all amendments be withdrawn and the bill be returned to the calendar; further, that the two scheduled cloture votes be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session and to consecutive votes on the following nominations on today's Executive Calendar: Calendar Nos. 305, 306, 307, 314, and 315. I further ask unanimous consent that following the votes, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Reserving the right to object, Mr. President, I would like to inquire of the leader, does that mean we would then have five consecutive votes on the five district judges?

Mr. FRIST. Mr. President, the unanimous consent does mean that we will have five consecutive votes on the district judges.

Mr. LOTT. Mr. President, could I ask unanimous consent that the request be amended to the effect that we have a recorded vote on the first judge and the next four be by voice vote?

Mr. LEAHY. I object.

Mr. LOTT. Could I propose that the request be amended so that we would have a recorded vote on the first three and count that as one, and that the last two be on voice vote?

The PRESIDING OFFICER. Does the majority leader so modify the request?

Mr. LEAHY. Reserving the right to object, could the distinguished Senator from Mississippi, my good friend, repeat that? I am not sure I understood.

Mr. LOTT. I was proposing the first vote would be en bloc on the first three judges and that the final two be by voice vote.

Mr. LEAHY. So the first vote would count for three.

Mr. LOTT. The first vote would count for three.

Mr. LEAHY. I have no objection.

Mr. BYRD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Could I ask if the leader would consider a modification—with apologies to all because I know we would all like to wrap this up—that we have the first two votes be recorded votes of 10 minutes and the final three be voice votes.

The PRESIDING OFFICER. Does the majority leader so modify his unanimous consent request?

Mr. FRIST. Mr. President, the majority leader does so modify. Calendar No. 305 would be a 10-minute vote; 306 would be a ten-minute vote, and the remaining three, 307, 314, and 315 would be en bloc and a voice vote.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, Mr. President, I have discussed this with the distinguished Senator from Mississippi. I have not heard any request from any of the members of the Judiciary Committee, chairmen or otherwise, on this. I have heard a number of members on the other side of the Judiciary Committee attack people on this side for not allowing judges to go through. This will make 145 of President Bush's judges going through. I was concerned because we have done so many by voice vote that my friends on the other side of the aisle have been so critical of this side for not allowing judges to go through. They may not have realized they were going through because we have voice-voted so many.

Because my good friend from Mississippi has asked me this as a personal matter, I have no objection to the request of the majority leader.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, once we conclude action on the judges, we will be finished voting for the evening. Those Members who want to speak on the supplemental appropriations bill will have the opportunity to do so. I understand that bill will be passed by voice vote. We will be in session tomorrow to clear any remaining legislative or executive items. Following Friday's session, the Senate will adjourn for the August recess until Tuesday, September 2. No rollcall votes will occur that day, and I will have more to say about the schedule when we return tomorrow.

NOMINATION OF JAMES I. COHN TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the nomination of James I. Cohn, of Florida, which the clerk will report.

The legislative clerk read the nomination of James I. Cohn, of Florida, to be a U.S. district judge for the Southern District of Florida.

Ms. LANDRIEU. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of James I. Cohn, of Florida, to be a U.S. circuit judge for the Southern District of Florida. The clerk will call the roll.

Mr. MCCONNELL. I announce that the Senator from Mississippi (Mr. COCHRAN) and the Senator from New Mexico (Mr. DOMENICI) are necessarily absent.

Mr. REID: I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye''.

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 320. Ex.]

YEAS—96

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Dorgan	McCain
Allen	Durbin	McConnell
Baucus	Edwards	Mikulski
Bayh	Ensign	Miller
Bennett	Enzi	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham (FL)	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Clinton	Inouye	Smith
Coleman	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Cornyn	Kohl	Stevens
Corzine	Kyl	Sununu
Craig	Landrieu	Talent
Crapo	Lautenberg	Thomas
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lincoln	Wyden

NOT VOTING—4

Cochran	Kerry
Domenici	Lieberman

The nomination was confirmed.

NOMINATION OF FRANK MONTALVO, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER (Mr. GRAHAM OF SOUTH CAROLINA). UNDER THE PREVIOUS ORDER, THE SENATE WILL PROCEED TO THE NOMINATION OF FRANK MONTALVO, TO BE UNITED STATES DISTRICT JUDGE, WHICH THE CLERK WILL REPORT.

The legislative clerk read the nomination of Frank Montalvo, of Texas, to be United States District Judge for the Western District of Texas.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered on this judge?

The PRESIDING OFFICER. No.

Mr. LEAHY. This is the second of the five?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Frank Montalvo, of Texas, to be United States District Judge for the Western District of Texas?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Mississippi (Mr. COCHRAN), the Senator from New Mexico (Mr. DOMENICI) and the Senator from Mississippi (Mr. LOTT) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 321 Ex.]

YEAS—95

Akaka	Dodd	Lugar
Alexander	Dole	McCain
Allard	Dorgan	McConnell
Allen	Durbin	Mikulski
Baucus	Edwards	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Bond	Fitzgerald	Nickles
Boxer	Frist	Pryor
Breaux	Graham (FL)	Reed
Brownback	Graham (SC)	Reid
Bunning	Grassley	Roberts
Burns	Gregg	Rockefeller
Byrd	Hagel	Santorum
Campbell	Harkin	Sarbanes
Cantwell	Hatch	Schumer
Carper	Hollings	Sessions
Chafee	Hutchison	Shelby
Chambliss	Inhofe	Smith
Clinton	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Lautenberg	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wyden
DeWine	Lincoln	

NOT VOTING—5

Cochran	Kerry	Lott
Domenici	Lieberman	

The nomination was confirmed.

NOMINATION OF XAVIER RODRIGUEZ, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS

The PRESIDING OFFICER. Under the previous order, the clerk will report Calendar No. 307.

The legislative clerk read the nomination of Xavier Rodriguez, of Texas, to be United States District Judge for the Western District of Texas.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Xavier Rodriguez, of Texas, to be United States District Judge for the Western District of Texas?

The nomination was confirmed.

H. BRENT MCKNIGHT, OF NORTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA

The PRESIDING OFFICER. Under the previous order, the clerk will report Calendar No. 314.

The legislative clerk read the nomination of H. Brent McKnight, of North Carolina, to be United States District Judge for the Western District of North Carolina.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of H. Brent McKnight, of North Carolina, to be United States District Judge for the Western District of North Carolina?

The nomination was confirmed.

JAMES O. BROWNING, OF NEW MEXICO, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO

The PRESIDING OFFICER. Under the previous order, the clerk will report Calendar No. 315.

The assistant legislative clerk read the nomination of James O. Browning, of New Mexico, to be United States District Judge for the District of New Mexico.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of James O. Browning, of New Mexico, to be United States District Judge for the District of New Mexico?

The nomination was confirmed.

Mrs. DOLE. Mr. President, I am delighted that my colleagues voted to confirm the nomination of Brent McKnight for one of the newly created judgeships in the Western District of North Carolina.

Mr. McKnight brings a wealth of experience to this position, and his resume and experience are impeccable. More importantly, Mr. McKnight is highly respected by his peers, a testament to his character and integrity.

Since 1993, he has served as a federal Magistrate Judge for the Western District of North Carolina, and he was appointed to the Advisory Committee on Civil Rules of the Judicial Conference by Chief Justice Rehnquist in October of 2001.

Brent McKnight has served as a state prosecutor and a District Court Judge for the 26th North Carolina Judicial District, and he maintains membership in the North Carolina Bar Association, the Federal Magistrate Judges Association, and many other organizations.

He has had a lifelong thirst for knowledge, having been a Rhodes Scholar and perhaps, even more impressive to those of us in North Carolina, a Morehead Scholar at the University of North Carolina at Chapel

Hill, a prestigious award named after the well-known philanthropist and scientist, John Motley Morehead III. Currently, Mr. McKnight shares his knowledge with aspiring students as an adjunct professor at both Wingate University and the University of North Carolina at Charlotte.

It is so critical that the Senate move quickly on this and other nominations so that our courts can get much needed relief. In the Western District, where Mr. McKnight is nominated, caseloads have increased significantly. The Administrative Office of the U.S. Courts has indicated that the three U.S. District Court judges in the Western district have the fourth-heaviest caseload per judge among the 94 federal judicial districts across the country. For instance, the number of case filed in the district grew from 1,321 in 1996 to 1,518 in the year 2001. The number of cases pending rose over the same time period from 1,209 to 1,522.

This backlog in our courts must be alleviated. Approving the nomination of Brent McKnight would place a qualified and credible jurist on the bench and provide the overburdened Western District with much needed relief.

Brent McKnight has my full support, and I would urge my colleagues to support his nomination.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

MORNING BUSINESS

Mr. SUNUNU. Mr. President, I ask unanimous consent the Senate proceed to a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

RETIREMENT OF RONALD E. MADSEN

Mr. HATCH. Mr. President, I am grateful for the opportunity today to pay tribute to a wonderful man, dedicated public servant, and loyal friend, Ronald E. Madsen.

Ron is retiring from my Senate Staff after 21 years of dedicated service to the people of Utah, a time throughout which he worked tirelessly to promote and protect the values and ideals we all hold so dear.

Ron joined my staff in the early days of my Senate career and has always been a vital center of my Senate organization.

He has served in many capacities including Utah state director, environmental and lands advisor, and most recently as staff counsel.

Ron Madsen has been a guiding influence for me. Over the years, we have navigated through many challenges and enjoyed many successes.

He has always diligently strived to provide sound counsel and steady support as we have worked together on issues facing Utah and the Nation.

In addition, Ron has played a vital role in working with many Utah industries and associations.

He spent many years advising and helping to promote the tourism and air travel industries throughout Utah.

He is a strong advocate for the Second Amendment and was a key liaison for my office on issues affecting this important constitutional right.

Over the years, Ron has spent literally months traveling Utah, meeting with county and city officials and getting a good feel for the issues and challenges Utahns are facing throughout our State.

But perhaps the most important and lasting service Ron performed were the literally thousands of hours he spent listening to and counseling constituents who called my office looking for assistance with a myriad of problems.

In Ron, they not only found help, they made a good friend. He has always been willing to work with all constituents, no matter their circumstances.

The friendship and help Ron Madsen extended has been invaluable to hundreds if not thousands of Utahns and will be felt for many years to come.

Ron was born and raised in Provo, UT where his family played an integral role in the community. He attended Brigham Young University where he received a Bachelor of Science Degree and graduated with honors. He was then awarded a 3-year trustee scholarship to George Washington University School of Law in Washington, D.C., where he served on the Law Review.

Ron later received his Juris Doctorate Degree with honors and went on to establish a successful and prestigious law career and was admitted to practice law in Washington, D.C., Maryland, Utah, and before the United States Supreme Court.

In addition to the service Ron has rendered in his community and our office, Ron is a loving father and grandfather. He is the proud father of one son and 2 daughters, and grandfather to 5 grandsons and 1 granddaughter.

I have often admired the dedication and devotion Ron Madsen has always shown, not only to his children and grandchildren, but to his wife Kathryn who was sick for many years and is now deceased.

Ron stood by her side through her struggles with health and was a steadfast partner until the end.

Ron also has a true love for animals and has opened his home to many animals in need of shelter and care. He has helped his daughter, a veterinarian technician by trade, nurse many wounded creatures back to good health and improved their quality of life immeasurably.

He has sacrificed his talents, time and financial resources for the creatures of our earth—something truly noteworthy and honorable.

I am truly grateful for the service Ron Madsen has given to me, to his community and to Utah. He has been by my side for many, many years and I will always be extremely grateful for the service he has rendered.

I will miss Ron tremendously, but know that life holds many wonderful things for him to savor and enjoy.

And as Ron has always liked to quote—''you can go off the Hatch payroll, but never off the Hatch staff.''

In the future, I plan to continue to rely on Ron Madsen for his very expert advice, for his guidance and support.

Ron is a truly dedicated public servant, fervently patriotic American, loving father and grandfather, and loyal and cherished friend.

I want to wish him the very best in retirement and pray for his continued good health, success and happiness.

THE NOMINATION OF WILLIAM PRYOR

Mr. DASCHLE. Mr. President, it is with reluctance and disappointment that I must rise in opposition to another cloture vote for a judicial nominee. But once again, the extreme ideology of a nominee has left us with no other option. But even if there were no questions about Mr. Pryor's ability to apply and interpret the law fairly, the open questions surrounding Mr. Pryor's ethical fitness, the unfinished investigation in the Judiciary Committee, and the fact that his nomination was reported out of committee in violation of committee rules, should compel the Senate to delay voting on this nomination. For both substantive and procedural reasons, Mr. Pryor's nomination should be put on hold. For that reason, I must oppose cloture.

I would remind my colleagues that we have invoked our right to unlimited debate with great rarity. Since President Bush took office, Democrats have been eager to cooperate in the nomination and confirmation of qualified judges who will enforce the law and protect the rights of all Americans. And we are proud of our record. When the Democrats held the Senate, we confirmed 100 of the President's judicial nominees. We rejected only two, Charles Pickering and Priscilla Owen. This year, we have already approved 40 more judges, and only 2 nominees, Miguel Estrada and Priscilla Owen, have previously met with sustained opposition. Democrats have sought compromise and consensus. And today, there are 140 judges sitting on the bench who serve as testimony to our cooperation.

But the importance of the Federal judiciary is too important to stand silently by and allow a nominee who has expressed hostility to the laws that protect the rights of all Americans. Mr. Pryor has repeatedly put his own personal and political beliefs above the dictates of the law. Throughout his career, he has been unable to find constitutional protection for even those rights that are clearly written and firmly established in case law. Not civil rights. Not voting rights. Not the right to privacy. In fact, Mr. Pryor has argued before the Supreme Court that it should cut back on the protections of

the Age Discrimination in Employment Act, the Civil Rights Act of 1964, the American with Disabilities Act, and the Family and Medical Leave Act. He referred to a recent decision reaffirming Miranda rights as ''preserving the worst examples of judicial activism.'' And he was, in fact, the only State attorney general in the country to challenge the constitutionality of the Violence Against Women Act. Adhering to an extreme interpretation of States rights, Mr. Pryor has stated that, ''Congress . . . should not be in the business of public education nor the control of street crime.'' Mr. Pryor has taken this position, even as President Bush has touted the importance of the Federal role in education and the COPS Program has put tens of thousands of new police officers on patrol in American towns and cities, contributing to the historic reduction in the crime rate of the 1990s.

But even if we disagree on the merits of Mr. Pryor's record, there can be no disagreement on the incompleteness of this debate. The Senate rules have preserved the right of unlimited debate because, as a deliberative body, we have an obligation to wait until all relevant information is available. In the case of Mr. Pryor's nomination, there are vitally important outstanding questions regarding his ethical fitness to serve. There was a bipartisan investigation that could have settled these questions once and for all. But in order to shield this nomination from legitimate questions, the chairman of the Judiciary Committee shut the investigation down. Then, in clear violation of the committee's rules, he pushed the nomination out of committee and onto the Senate floor. In the process, the chairman has not only allowed a cloud of suspicion to hang above Mr. Pryor's nomination, he has denied the Judiciary Committee the right to determine whether or not the nominee was forthright.

Esteem for the Federal bench, and the Judiciary Committee, should prevent such questions from going unanswered. And I would hope that my colleagues would share that view. This is a body of rules. And this is a country of laws. I cannot imagine that there is ever a time that any one of us ought to be in a position to say the rules in this case are simply not going to apply. But that is precisely what was done by the chairman of the Judiciary Committee—ironically the committee which passes judgment on those who will interpret the rule of law. Members of the committee called attention to this extraordinary development with grave concern about its implications, about its precedent, about the message it sends. After assurances by the majority leader that this would not occur, this nomination has nonetheless made it to the floor. We should not reward this disregard for the rules of the Senate by permitting the nomination to go forward.

Amazingly, this is not the ugliest aspect of this debate. Because we have expressed our opposition to Mr. Pryor, Democrats have been accused of anti-Catholic bigotry. Of course, nothing could be further from the truth. I am proud of my Catholic faith. That pride is shared by many members of our caucus. Many of us grew up listening to our parents or grandparents tell stories of seeing signs that said No Catholics Need Apply on storefront windows. In 1960, the Democratic nominee for President, John Kennedy, faced questions regarding whether a Catholic could be sufficiently independent of church doctrine in order to serve his country. John Kennedy put those questions to rest and a generation of Catholics have been able to serve their country without being forced to justify their loyalty or patriotism.

This line of attack has resuscitated a profoundly un-American idea. The charge that our opposition to Mr. Pryor is rooted in bigotry is repugnant and divisive. This is an egregious misuse of religion for profane political purposes. All Americans should be offended by this charge and disappointed that the discourse has degraded to such an extent. These are slanderous charges, and they have no place in this body. Each time Democrats have risen to oppose cloture on a judicial nomination, the majority's attacks against us have grown more vehement and abrasive. We can't control that. But we can control our response. Each Member of the Senate has sworn an oath to uphold and defend our Constitution. That is precisely what we are doing today by opposing the nomination of William Pryor. No attack, no matter how offensive, will shake us from our duty.

Mr. LEAHY. Mr. President, as I have mentioned a few times over the last few days, and as anyone watching the horrible display here on the floor last night knows, those opposing the confirmation of William Pryor to the Eleventh Circuit have been subjected to a despicable smear. Supporters of the nomination have turned reality on its head. They accuse us of imposing a religious test, but it was a Republican supporter of the nomination who was the only Senator to ask Mr. Pryor what his religion was and to use what they now term a code phrase ''deeply held religious beliefs.''

The scurrilous accusations against opponents of the nomination must be popular with the political gurus at the White House. It has been echoed in recent days by the Committee for Justice, a group closely associated with the President and his family, headed by the first President Bush's White House counsel. I know about the bias against immigrants and against Catholics. That was real discrimination. What is being spread this week is a falsehood uttered for partisan political purposes.

Those who know what real religious discrimination is have spoken out against the advertising campaign. Earlier today I mentioned the members of the Interfaith Alliance, who spoke so eloquently against this sort of smear. Now I am pleased to recognize the Anti-Defamation League, so well known and well respected for their work against religious bigotry, for speaking out against the Committee for Justice's slurs. Abraham H. Foxman, the National Director of the ADL, and Glen A. Tobias, its National Chairman, have written to the head of the Committee for Justice, Mr. Boyden Gray, to object to his advertisements. They explain to Mr. Gray, that, ''[t]o promote the view that Mr. Pryor's opponents object to his Catholic religious beliefs, rather than his views as expressed in his prolific legal writings and speeches and his answers to questions at his Judiciary Committee confirmation hearings, needlessly and wrongfully injects religion into the Senate's 'advise and consent' role in the nomination process.''

I could not agree more. I appreciate that the ADL has added its voice to those trying to show the Committee for Justice the error of its ways. I ask unanimous consent the ADL's letter to Mr. Gray be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JULY 30, 2003.

C. BOYDEN GRAY, Esq.
Chairman, The Committee for Justice, Wilmer, Cutler & Pickering, Washington, DC 20037.

DEAR MR. GRAY: On behalf of the Anti-Defamation League (ADL), we write to strongly object to the recent advertising campaign launched by the Committee for Justice (CFJ) that harshly criticizes opponents of judicial nominee William Pryor for ''playing politics with religion.'' These misleading ads claim that ''some in the U.S. Senate are attacking Bill Pryor for having 'deeply held' Catholic beliefs to prevent him from becoming a federal judge'' and graphically illustrate the assertion with a picture of a sign hanging on the door to ''Judicial Chambers'' that reads, ''Catholics need not apply.''

We are unaware of any Senator who has attacked Mr. Pryor ''for having 'deeply held' Catholic beliefs.'' To promote the view that Mr. Pryor's opponents object to his Catholic religious beliefs, rather than his views as expressed in his prolific legal writings and speeches and his answers to questions at his Judiciary Committee confirmation hearings, needlessly and wrongfully injects religion into the Senate's ''advise and consent'' role in the nomination process.

ADL does not as a practice endorse or oppose nominees to the bench. However, because Mr. Pryor has written and spoken so prolifically and so forcefully as an advocate on several issues of deep concern, we believe his positions merit close scrutiny by the Senate. Our objections to this nomination stem from Mr. Pryor's well-documented views, not his religious beliefs.

We believe that CFJ's ad campaign is misleading and inflammatory. We urge you to reconsider further promotion of this effort.

Sincerely,

GLEN A. TOBIAS,
National Chairman.
ABRAHAM H. FOXMAN,
National Director.

Mr. LEVIN. Mr. President, I oppose the nomination of William Pryor to the Eleventh Circuit Court of Appeals. Mr. Pryor holds extreme views on a range of issues, has engaged in inflammatory rhetoric when expressing those views,

and has exhibited a questionable commitment to separating politics from the law.

Mr. Pryor has led Alabama's efforts to challenge Federal power and argue that the State should be immune from violations of Federal law. He has filed briefs challenging Congress' authority to enact parts of the Family and Medical Leave Act; he has argued against Congress' authority to protect disabled people from discrimination; and during Mr. Pryor's tenure as attorney general, Alabama was also the only State to file an amicus brief opposing the Government in a case limiting Congress' authority under the Clean Water Act.

Our country is built upon tolerance for a diversity of faiths yet Mr. Pryor has also shown little respect for the important constitutional principle of separation of church and state.

As an appellate court judge, Mr. Pryor would be required to follow precedents established by the Supreme court. But Mr. Pryor has openly shown disdain and indeed personally attacked individual justices. For instance, he stated, ''I will end my prayer for the next administration: Please God, no more Souters.''

There are just too many indications that Mr. Pryor would be unable to separate his politics from the law. Just listen to what Former Republican Arizona Attorney General Grant Woods said about Mr. Pryor. Mr. Woods described Pryor as ''probably the most doctrinaire and the most partisan of any attorney general [he had] dealt with in eight years, so people would be wise to question whether or not [Pryor is] the right person to be non-partisan on the bench.''

The majority brought this nomination to the floor and immediately filed a cloture petition, not allowing for adequate debate on Mr. Pryor's controversial nomination. I think that is wrong Wrong for the Senate. Wrong for our Federal courts. And wrong for the country. For these reasons, I oppose cloture on Mr. Pryor's nomination.

Mr. KOHL. Mr. President, yesterday we voted on a motion to invoke cloture on the nomination of William Pryor to be a judge on the Eleventh Circuit Court of Appeals. After careful consideration of his candidacy, I had no choice but to oppose his confirmation in the Judiciary Committee last week and opposed cloture on his nomination as well.

When considering a nominee to a Federal court judgeship, we consider the nominee's legal skills, judgment, reputation, and acumen. The nominee should be learned in the law. And the nominee should be well regarded among his peers in his or her community. Perhaps most important of all is the nominee's judicial temperament.

An appeals court judge's solemn duty and paramount obligation is to do justice fairly, impartially, and without favor. An appeals court judge must be open minded, must be willing to set his or her personal preferences aside, and must be able to judge without predisposition. And, of course, he or she must follow controlling precedent faithfully, and be able to disregard completely any views he or she holds to the contrary.

In the case of Attorney General Pryor, we are presented with a nominee whose views are so extreme that he fails this basic test. In case after case, and on issue after issue, Attorney General Pryor has a public record of taking the most extreme position, often at odds with controlling Supreme Court precedent, and in the most hard-line and inflexible manner.

Pryor's views are outside of the mainstream on issues affecting civil rights, women's rights, disability rights, religious freedom, and the right to privacy. He assures us that despite these views, he will follow settled law and Supreme Court precedent. After making extreme statements to the committee and in his hearing and refusing to disavow other zealous positions that he has taken throughout his career, he wants us to believe that he will blindly follow the law as a judge.

Let me make clear that the mere fact that Attorney General Pryor opposes abortion is not the reason I oppose him today. I have voted to confirm literally hundreds of judges, nominees who have both supported and opposed abortion. It is not Attorney General Pryor's views on whether or not he believes legal abortion is good public policy which concern me. Instead, the crucial issue is whether Attorney General Pryor can put his personal views aside and apply the law of the land as decided by the Supreme Court. It is my conclusion that he cannot.

His inability to set his personal views aside has been demonstrated most explicitly in his activist attempts to challenge numerous federal statutes. He has chosen to expand on his cramped view of federalism and challenge the ability of the Federal Government to remedy discriminatory practices. Many of the cases in which he took his most extreme legal positions were on behalf of the State of Alabama where he had the sole decision under state law as to what legal position to assert. These cases include his assertion of federalism claims to defeat provisions of the Age Discrimination in Employment Act and the Americans With Disabilities Act; his opposition to Congress's authority to provide victims of gender-motivated violence to sue their attackers in federal court; his argument that Congress exceeding its authority in passing the Family and Medical Leave Act; and many other cases. The extreme legal positions advanced in these cases were fully and entirely the responsibility of Attorney General Pryor.

Of course, Attorney General Pryor has every right to hold his views, whether we agree with him or not. He can run for office and serve in the legislative or executive branches should he convince a majority of his fellow Alabamans that he is fit to represent them. But he has no right to be a Federal appeals court judge. Only those who we are convinced are impartial, unbiased, fair, and whose only guiding ideology is to follow the Constitution to apply equal justice to all are fit for this position. Unfortunately, we can have no confidence that he will set these views aside and faithfully follow the Constitution and binding precedent. For these reasons, I must oppose his confirmation.

I would be remiss if I did not address briefly—for a brief remark is all this point is worth—the destructive charges that those of us who oppose Mr. Pryor are anti-Catholic. The people who have put forward this charge engage in the worst form of personal destruction. These allegation are beneath the dignity of the process and beneath the dignity of the Senate and must be rejected by everyone involved.

One last point. The Judiciary Committee began an investigation into statements made by the nominee before this committee, Unfortunately, that investigation has not been completed, so I am not ready at this time to judge whether Mr. Pryor lied to the Judiciary committee at his hearing with regard to his involvement in fundraising activities. This investigation involves very serious matters and must be allowed to proceed.

I will vote no.

● Mrs. FEINSTEIN. Mr. President, I took the floor last night to speak about the nomination of William Pryor and the unfortunate circumstances surrounding that nomination, and since that time certain of my colleagues on the other side of the aisle have chosen to mischaracterize my statements and perpetuate the unfair and baseless charges I was trying to debunk.

I want to briefly correct the record on two of these mischaracterizations, because I believe very strongly that these types of wrongful allegations should not be allowed to stand.

First, the junior Senator from Pennsylvania stated that anyone who questioned Mr. Pryor's ''deeply held beliefs'' would be questioning his religious beliefs. Specifically, he said: I just suggest that it is obvious to anyone that this code word is an antireligious bias.

Senator DURBIN attempted to correct the record immediately but was not allowed to do so until later. I appreciate his efforts in that regard, but I think I should also set the record straight myself.

First, what I said in my statement was clearly not a religious attack. I said, and I quote:

> Many of us have concerns about nominees sent to the Senate who feel so very strongly, and sometimes stridently, and often intemperately about certain political beliefs and who make intemperate statements about those beliefs. So we raise questions about whether those nominees can be truly impartial, particularly when the law conflicts with those beliefs.

So Mr. President, I was very careful to raise this concern about deeply held

political beliefs, not religious beliefs. And my concern is not just the beliefs themselves but the manner in which they are expressed. I have found that intemperate statements often accompany intemperate people.

Indeed, I went on to say that, and again I quote:

It is true that abortion rights can often be at the center of these questions. As a result, accusations have been leveled that any time reproductive choice becomes an issue, it acts as a litmus test against those whose religion causes them to be anti-choice. But pro-choice Democrats on this committee have voted for many nominees who are anti-choice and who believe that abortion should be illegal, some of whom may even have been Catholic. I do not know because I have never inquired.

So this truly is not about religion. This is about confirming judges who can be impartial and fair in the administration of justice. I think when a nominee such as William Pryor makes inflammatory statements and evidences such strongly held beliefs on a whole variety of core issues, it is hard for many of us to accept that he can set aside those beliefs and act as an impartial judge—particularly because he is very young, 41; particularly because this is a lifetime appointment; and particularly because we have seen so many people who have received lifetime appointments then go on and do just what they want, regardless of what they said. So it is of some concern to us.

That is what I said. I did not attack Mr. Pryor's religion. Nobody in this debate has. I did not attack his religious beliefs. Nobody in this Senate has.

To accuse anyone in this body of using an anti-Catholic litmus test is inaccurate, and wrong. It is ill-advised, and it risks bringing us back to a day where religion and race and gender debates split this Nation apart at its seams.

The judicial nominations process is a serious one and filled with countless debates about very serious issues. We should focus on what is important and real, not on what can inflame political supporters.

The second mischaracterization of my statement was by the junior Senator from Alabama. I know he feels very strongly about this nominee, so I do not blame him for fighting hard for Mr. Pryor.

Nevertheless, the junior Senator from Alabama did not accurately portray what I said in my statement. Specifically, the Senator said that I claimed Mr. Pryor had ''used his power as attorney general to obstruct the enforcement of the Violence Against Women Act in Alabama.''

What I actually said was that Pryor ''used his position as attorney general to limit the scope of crucial civil rights laws like the Violence Against Women's Act, VAWA, the Age Discrimination In Employment Act, the Americans with Disabilities Act, the Fair Labor Standards Act, and the Family Medical Leave Act. . . . For example, he was the only attorney general to argue against a key provision in the Violence Against Women Act on federalism grounds.''

Now in retrospect, I should have been more careful in the wording of my statement, and for that I am sorry. I said that Mr. Pryor ''used his position as attorney general to limit the scope of crucial civil rights laws . . .'' rather than saying what I meant to say, which was that he argued for limiting the scope of those laws—sometimes successfully—in briefs before the Federal courts.

But I certainly never said that he used his power to ''obstruct'' the law in Alabama.

Some other comments have been made throughout this debate that mischaracterize the Democratic opposition to this nominee and in many instances state, or at least imply, that our opposition is based on religion.

I will say once again, this is simply not true.

I hope, as I said yesterday, that this debate can focus on what it should focus on, the qualifications of this nominee. That focus should not have been lost through a violation of the committee rules, the thwarting of an ongoing investigation into the nominee, or these false charges of religious bias.●

TRIBUTE TO DR. THOMAS D. CLARK

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to a legend, Kentucky's Historian Laureate Dr. Thomas D. Clark. On July 14, 2003, Dr. Clark turned 100 years old.

Dr. Clark has been described as a ''State treasure.'' A native of Mississippi, Dr. Clark stumbled upon Kentucky as he sought to further his education. He earned a scholarship to the University of Kentucky where he received a master's in history in 1929. From there, he went on to Duke University, where he obtained a Ph.D. In true Kentucky style, Dr. Clark returned to the Commonwealth and began researching its rich past. He has written more than 32 books including, ''A History in Kentucky,'' and served in the University of Kentucky's Department of History for nearly a quarter of a century. One of the State's leading scholars, he proudly calls Kentucky home.

Dr. Clark's service to my great State has not gone unnoticed or unappreciated. In 1969, the University of Kentucky presented Dr. Clark with an honorary doctorate for the way he touched so many Kentuckians during his teaching career. Over his 100 years, he has received many awards and honors, including the University of Kentucky Library Medallion for Intellectual Achievement and the Commonwealth Historian Laureate for life. Dr. Clark also has a building and a foundation named in his honor by the University Press of Kentucky.

Kentuckians admire Dr. Clark for his patriotism to the State, his adept knowledge of our history, and most importantly, his zest for life. I ask my colleagues to join me in honoring Dr. Clark and congratulating him on his Centenarian status.

HONORING THE LIFE OF SENATOR VANCE HARTKE

Mr. BAYH. Mr. President, I rise today to honor the life of my fellow Hoosier, Senator Vance Hartke, who passed away on July 27. Senator Harke dedicated his life to serving his country and our home State of Indiana, setting an example of personal conviction and political courage throughout his 18 years as senator.

Born on May 31, 1919, Vance Hartke grew up in Stendal, IN. He attended the University of Evansville and then earned his law degree from Indiana University. Senator Hartke served 4 years as a member of the Coast Guard and as a U.S. Navy officer during World War II. Upon his return to Indiana, Hartke began practicing law in Evansville, where he was elected mayor in 1955. From there, he was elected Senator in 1958, demonstrating a work ethic on the campaign trail that is remembered by Hoosiers still today. Senator Hartke served three continuous terms as senator, the first Indiana Democrat ever to do so.

While serving as Senator, Hartke played a crucial role in requiring auto manufacturers to install seatbelts in their cars, and supported legislation that created the Head Start Program, which continues to provide early education opportunities for tens of millions of children from lower-income families. He led Senate support for Medicare, work that earned him the nickname ''Father of Medicare.'' Senator Hartke also was instrumental in creating the International Executive Service Corps, an organization modeled on the Peace Corps that sent retired U.S. business executives to developing countries to help expand their local businesses.

During a particularly trying time in our nation's history, Senator Hartke remained unafraid to take a bold stance in support of his convictions, sometimes in the face of strong opposition. He chose to speak out against the Vietnam war, knowing that doing so would cost him his friendship with President Lyndon Johnson, because Senator Hartke felt it was his moral responsibility to defend his beliefs.

However, of the many issues Senator Hartke supported during his 18 years as Senator, family members recall that one of his proudest accomplishments was his work on legislation that provided affordable treatment for kidney diseases. It was work that was largely overshadowed by his personal stances on other issues, but it led to the creation of a bill now credited with saving more than 500,000 lives.

The sense of loss to all those who knew Senator Hartke is tremendous. He is survived by his wife of 60 years, Martha, four sons, three daughters, and 16 grandchildren.

HONORING OUR ARMED FORCES

Mr. BAYH. Mr. President, I rise today to honor the accomplishments of

the Hoosier soldiers of the 1st Battalion, 293rd Infantry from the Indian National Guard, who have become the first National Guard battalion in the Nation to receive the Combat Infantry award since World War II.

The Combat Infantry award is a highly coveted honor given by the Department of the Army to soldiers who have satisfactorily performed infantry duties as part of a unit that participated in ground combat. The Infantry badge honors soldiers who have operated under the worst conditions, yet still successfully performed his or her mission in a combat environment. In addition, medics who supported the soldiers will receive the Combat Medical Badge. I am immensely proud that it is an Indiana battalion that has become the first unit in more than 50 years to earn this distinction.

All members of the battalion will receive the Combat Infantry award as a symbol of our Nation's gratitude for the bravery they demonstrated and the sacrifices they and their families have made during Operation Iraqi Freedom. The 1st Battalion, 293rd Infantry is the first Indiana National Guard unit to go into combat since the Korean war. As this award recognizes, they have made an exemplary return to battle, honoring themselves and their home State of Indiana through their efforts.

The battalion has been stationed in Iraq for nearly 7 months. During their time in Iraq, the soldiers of the 1st Battalion, 293rd Infantry have provided security for the Talil Air Force Base, a key airstrip in Southern Iraq. The unit took over responsibility for the base just days after the war's deadliest battle took place on April 1 too secure control of the airstrip.

I am proud to honor the soldiers of the 1st Battalion, 293rd Infantry. The thoughts and prayers of all Hoosiers are with them as they continue their role in rebuilding Iraq. May God watch over the soldiers as they complete their duty and may God bless the United States of America.

HONORING PRIVATE ROBERT MCKINLEY

Mr. President, I also rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Peru, IN. Private Robert McKinley, 23 years old, died in Hamburg, Germany on July 8 after suffering heat stroke the month before while fighting in Mosul, Iraq. Robert joined the Army with his entire life before him. He chose to risk everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Robert was the twelfth Hoosier soldier to be killed while serving his country in Operation Iraqi Freedom. Today, I join Robert's family, his friends, and the entire Peru community in mourning his death. While we struggle to bear our sorrow over his death, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is this courage and strength of character that people will remember when they think of Robert, a memory that will burn brightly during these continuing days of conflict and grief.

Before leaving to fight in Iraq, Robert McKinley promised his grandfather he would be careful, telling him that if there was anything he could do to make our country better, then he wanted to do it. Robert had only been in the Army for 8 months, but had already seen three tours of duty and was serving in the 101st Airborne Division, a unit which played a crucial role in the actions in Iraq.

Robert was born in Peru, IN. He enjoyed fishing for walleye in Canada with his grandfather and participated in Peru's 4–H Club for 10 years. Robert graduated from Peru High School in May 1998. His family says the military provided him with an essential sense of direction. Robert leaves behind his mother, Deborah McKinely, his sister, Kay, and his grandparents, Robert and Pauline Feller.

As I search for words to do justice in honoring Robert McKinley's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Robert McKinley's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of Robert McKinley in the official record of the Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Robert's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God bless the United States of America.

TRIBUTE TO PFC. WILFREDO PEREZ, JR.

Mr. DODD. Mr. President, I rise to pay tribute to the late Pfc. Wilfredo Perez, Jr., of Norwalk, CT, who was killed in the line of duty last Saturday while guarding a children''s hospital in Iraq.

Private Perez, who was 24 years old and served with the 4th Infantry Division, was the third resident of Connecticut to fall in Iraq since the onset of Operation Iraqi Freedom earlier this year. He made the ultimate sacrifice for our nation—and his bravery and heroism will not be forgotten by the people of Connecticut.

Wilfredo Perez was born in New York City and moved to Connecticut with his father, Wilfredo, Sr. while he was in middle school. He and his family were well-loved in their community, especially around Halloween time when their haunted house was a neighborhood favorite.

Throughout his years at Norwalk High School, Wilfredo Perez became known as a playful, mischievous type—a boy who would show up to Junior Air Force ROTC with his uniform untucked, or with no uniform at all. He left high school early and went to work as a contractor with his father.

A few years later, though, Wilfredo began to change. He made a commitment to turn his life around and earned his GED. Then, a little more than a year ago, he made a commitment to his country by enlisting in the United States Army.

Enlisting in the Armed Forces can mean many things to many people. For Wilfredo Perez, it was a personal challenge—a challenge to better himself, to develop as an individual, to find a sense of direction, and to pave the way for a successful future. Private Perez not only met his own goals he exceeded all expectations.

Shortly before he was transferred to Iraq, Private Perez returned to Norwalk and visited his old high school. His former teachers and principal watched as the boy whose shirt was always untucked strode confidently through the hallways in a pristine military uniform, beaming with pride. He spoke to students in school about his life—about the mistakes that he made, and about the path that he ultimately chose.

For Wilfredo Perez, the United States Army was truly a rewarding, transforming experience. And like so many of our finest men and women whose lives are tragically cut short, there is simply no telling how far he could have gone.

I join the State of Connecticut—and indeed the entire country—in mourning Wilfredo Perez, and in thanking him for his tremendous service to our country. I offer my deepest condolences to his family, his friends, and everyone else whose life was touched by Pfc. Wilfredo Perez.

TRIBUTE TO UNITED STATES NAVY CAPTAIN DUDLEY B. BERTHOLD

Mr. MCCONNELL. Mr. President, today I honor a great American from the Commonwealth of Kentucky. After 25 years of dedicated service to our country, Captain Dudley B. Berthold of the United States Navy will retire on August 8 of this year. I would like to take a moment to recognize his accomplishments.

Captain Berthold is the son of retired USAR, Brigadier General Julius L. Berthold. I am pleased to say he attended the University of Louisville as an NROTC Midshipman and graduated in 1978. Upon graduation he was commissioned as an Ensign in the U.S. Navy, and shortly after completing Surface Warfare Officer School he reported to his first assignment on board the USS O'Bannon, DD 987, serving first as Auxiliary Officer and then as the Main Propulsion Assistant.

Captain Berthold began his extensive study in aircraft carrier design in 1982, when he enrolled in the Naval Postgraduate School of Monterey, CA, and earned an MS degree in Mechanical Engineering. He was selected for the Naval Nuclear Power Training Program, which led to training assignments at the Naval Nuclear Power School in Orlando, FL, and the Nuclear Prototype Propulsion Plant Training Unit in Ballston Spa, NY. His assignments took him from the decks of the USS *Theodore Roosevelt*, CVN 71, where he served as the Electrical Officer, to the shores of Virginia where, in 1989, he was assigned as the Aircraft Carrier New Construction Principle Assistant Project Officer on the staff of the Supervisor of Shipbuilding at Newport News. Here, he assisted in the planning and execution of the construction, test & trials, and delivery of the USS *George Washington*, CVN 73. On later tours, he oversaw the delivery of both the USS *Harry S Truman*, CVN 75, and the USS *Ronald Reagan*, CVN 76.

Most recently, Captain Berthold served as Program Manager for the Navy's future aircraft carrier programs at the Navy's Program Executive Office for Aircraft Carriers in Newport News, VA. He has played a key role in developing new and innovative acquisition strategies for the design and construction of the final Nimitz Class Aircraft Carrier, USS *George H W Bush*, CVN 77, and the new CVN 21 class. This new class of aircraft carrier design sets a new standard for war-fighting capability and will influence the readiness of our military throughout the 21st century.

Captain Berthold has earned a great number of personal decorations, including the Meritorious Service Medal with three Gold Stars, the Navy Commendation Medal with one Gold Star, and the Navy Achievement Medal. I am proud to represent such a fine Kentuckian in the U.S. Senate, and I thank him for his dedication to the people of the United States. His list of accomplishments is great, yet being the son of retired USAR, Brigadier General Bud Berthold, whom I consider to be a close personal friend and wonderful role model, certainly ranks high on that list. While the Navy will lose a loyal seaman, his wife, Deborah Lynn, and two children, Bryant and Bridgette, will welcome him home with open arms. I wish Captain Dudley B. Berthold the traditional naval wish of ''Fair winds and Following seas'' as his military career comes to an end. And I congratulate him on his retirement.

NOMINATION OF CAROLYN KUHL

Mr. LEAHY. Mr. President, the Republican leadership's actions this week were an attempt to create the impression that Senate Democrats are stalling judicial nominations. Rather than work with us to confirm the five consensus judicial nominations that have been before the Senate and available for action all week, the Republican leadership has chosen to schedule cloture vote after cloture vote on the most divisive, controversial and extreme of this President's judicial nominees.

Senators have spoken to the contentious nominations Republicans have tried to force through the Senate confirmation process this week. This is a striking difference from the days in which more than 60 of President Clinton's judicial nominees were stalled and defeated by anonymous holds and secret objections. Just as I made Judiciary Committee blue slips and the process by which the committee consults with home-state Senators public when I chaired the committee in 2001, Democratic Senators have not opposed nominees without coming before the Senate and making known their concerns.

During the 17 months a Democratic Senate majority reviewed this President's judicial nominees we were able to confirm 100 judges. This year, we have cooperated in the confirmation of 45 additional judges. The total confirmations already number 145. We have worked in good faith to reduce judicial vacancies to the lowest level in the last 13 years and to increase the full-time judge on the Federal bench across the country to the highest number in our history. We continue to work in good faith and the Democratic Senators on the Judiciary Committee have joined in reporting at least a dozen additional judicial nominations favorably to the Senate. Working together the Republican and Democratic leadership will be able to schedule debate and votes on those judges.

There are other nominees I frankly do not support and that large numbers of Senators do not support. And yet, as chairman, I did something our Republican predecessor never did, I proceeded on judicial nominations I opposed. Some were confirmed; a few have been so extreme and controversial that they have not been confirmed. Ours is a good record and a fair record.

It is a record that shows we have sought, as Senator BAUCUS explained recently, to protect the essential independence of the judiciary, to support fair-minded impartial judges, and to protect the essential rights of all Americans.

This week we have witnessed a number of unsuccessful cloture petitions. When the Republicans filed these petitions they knew they would be unsuccessful. The Republican leadership was nonetheless insistent on diverting hours from debate on the Energy bill in order to create partisan talking points. This is another example of how this administration and its aides here in the Senate are seeking to use judicial nominations for partisan purposes. That is most unfortunate.

Republican partisans have changed the practices and rules of the Senate that have helped over time to encourage the White House to work with home-State Senators and to consult with both sides of the aisle in the Senate. When judicial nominations were being made by a Democratic President, the objection of a single home-State Senator would have prevented any action on a judicial nomination. As the chairman of the Judiciary Committee acknowledged in 1999, under the practices of the committee, no nomination opposed by both home-State Senators would proceed. Yet now that the President is a Republican and the home-State Senators are Democrats, the rules are changed and traditional practices are conveniently abandoned.

The big picture is that we have the most confrontational President in recent history. His administration is committed to a plan to pack the Federal courts with nominees of a narrow judicial ideology. Compounding the situation, the Republican leadership in the Senate has decided to assist the administration in this effort at all costs. Longstanding Senate practices and rules have been broken. Home-State Senators are being ignored or overridden if they are Democratic Senators, committee rules are being breached, committee practices of the last 25 years are being ignored in a rush to steamroll the Senate.

Sadly, the most partisans have made detestable arguments and injected religion into the debate. Regrettably, the Senate under its current leadership has abandoned its constitutional role as a check on the Executive.

So we have the most aggressive Administration in recent history and its efforts to pack the courts are being facilitated by efforts of the Republican Senate majority and its willingness to remove all the processes and practices that had been available to the Senate to provide a check and balance. As they remove the mechanisms that had traditionally provided incentives for the Executive to consult with the Senate, the administration has refused to moderate its actions. Instead, Republican partisans have ratcheted up the points of contention and conflict. Rather than work in a bipartisan way to unite the country and maintain a balanced and independent federal judiciary, Republicans insist on the expedited confirmation of every nomination no matter how extreme. With all of the other, traditional screening mechanisms removed, only one Senate procedure is left—the filibuster. All their talk about supposed obstructionism is just that, partisan talking

points. The factors that have led to more filibusters than usual this week have been the actions of the administration and Senate Republicans.

These matters need not be contentious. The process starts with the President. If this administration would work with us, we could avoid these situations. We have and will continue to work with the administration. We would like to be more helpful in the President's identification of nominees and advising him on the selection of consensus nominees so that we can join together in adding those confirmations to the 145 so far achieved.

GEORGE J. MITCHELL SCHOLARSHIP PROGRAM AND U.S.-IRISH RELATIONS

Mr. KENNEDY. Mr. President, yesterday's New York Times carried a very interesting article about a new scholarship program created three years ago to encourage young Americans to pursue graduate study in Ireland and learn more about that country and its long-standing ties of history and heritage to the United States.

The program is called the George J. Mitchell Scholarship Program. The name honors our former Senate Majority Leader George Mitchell, who is especially admired in Ireland and among Irish Americans and even in Great Britain for his leading role in recent years in advancing the peace process in Northern Ireland as Special Advisor to President Clinton on Ireland.

The Scholarships were created by the U.S.-Ireland Alliance, a non-partisan, non-profit organization founded in 1998 by my former foreign policy adviser, Trina Vargo, who is well known to many of us in Congress for her outstanding work in Irish issues. As many of our colleagues in the Senate and the House know, the Alliance has worked closely with both Republicans and Democrats to strengthen the ties between the United States and Ireland.

The twelve Mitchell Scholars selected each year are outstanding young American students who are gifted academically, and who show promise for future leadership in the public or private sectors in maintaining close ties between the United States and Ireland. I commend Ms. Vargo and the U.S.-Ireland Alliance for the prestige and popularity the scholarships have earned so quickly, and I ask unanimous consent that the New York Times article may be printed in the RECORD.

[From the New York Times, July 30, 2003]

MITCHELL SCHOLARS DELVE INTO IRISH CULTURE, TOO

(By Brian Lavery)

DUBLIN, July 29.—When Emily Mark arrived in Dublin to study art history at Trinity College, she postponed worrying about classes until she found a traditional musician to teach her the Irish style of playing five-string claw-hammer banjo.

This month, Ms. Mark completed a Mitchell Scholarship, a program that often sounds more like a cultural immersion course than the pursuit of a master's degree. Named in honor of former Senator George J. Mitchell for his role in the Northern Irish peace process, the scholarship's explicit objective is to instill an appreciation for Ireland in a generation of up-and-coming Americans.

To that end, Irish-American applicants have no advantage in the competition for the 12 places, said the program's founder, Trina Vargo, and the Mitchells are financed by groups that may stand to benefit from the warm feelings of Americans. In 1998, the Irish government gave more than $4 million for an initial endowment, while sponsors include the British government and some of the largest corporations in Ireland. (Nine major Irish universities provide room and board and waive tuition for Mitchell recipients.)

Those donations provide for a $12,000 stipend and trans-Atlantic airfare.

Mitchell recipients understand that the foundation behind the program, the U.S.-Ireland Alliance, which is based in Washington, wants them to become good-will ambassadors for Ireland. Rather than balk at the responsibility, they say that emotional and intellectual links are exactly what they expect to gain from their year here.

''I didn't feel pressure that I ultimately need to do some great work for Ireland,'' said Jeannie Huh, a West Point graduate who studied public health at Trinity College. ''But I definitely do feel that over the course of the year I have built a spot in my heart for the country and the people. I think that's just inevitable.''

Most Mitchell scholars try to blend into Irish society by complementing their studies with internships, part-time jobs and community work. In the last few years, three Mitchell recipients withdrew from the running for Rhodes Scholarships, and that multidisciplinary approach is one reason.

''It was more than just an academic program; it has that cultural element,'' said Georgia Miller Mjartan, who was a Rhodes semifinalist from Arkansas when she won a Mitchell Scholarship. She said that she realized at her Mitchell interview that she would accept the scholarship if it was offered.

''I knew that, as far as prestige, it would be good for me to go through with the Rhodes process, even if I didn't take it,'' she said. But Ms. Mjartan, who is 23 and lived in Carrickfergus, Northern Ireland, over the last year, withdrew her application after learning that her place, if she won, would not be awarded to an alternate candidate if she declined the scholarship. ''That wouldn't be right, because I would be taking it away from someone else,'' she said.

The application process is intended to be friendly, with one short essay and interviews that focus on identity and personality instead of academic detail, Ms. Vargo said. Those who are accepted are encouraged to wait until they hear from other scholarship programs before deciding which to choose.

''You want them to have a reason to be here, and a really good understanding of why they're here,'' Ms. Vargo said.

Ms. Vargo, a former foreign policy adviser to Senator Edward M. Kennedy, knows Irish business and political circles well, and Mitchell scholars often use her network of connections. Last year, she introduced Mark Tosso to the top official in the prime minister's office, who found him a job conducting a review of communications systems for employees throughout the Irish government. ''They had this project which was puttering along, and they needed someone to take charge of it,'' Mr. Tosso said.

In the same way, Ms. Mark, the banjo player, met a Dublin lawyer who hired her to help set up a new fund-raising arm for Amnesty International. ''Everyone just bowls themselves over to help you,'' she said. ''As soon as you express an interest in something, the opportunity is there.''

The scholars also improvised when they found Irish culture less familiar with the idea of internships or entrepreneurial volunteer work. With her professor at Trinity College, Ms. Huh approach a charity based in Dublin and ended up in Bangladesh for five weeks, doing research on malnutrition. Mariyam Cementwala, from Bakerfield, Calif., organized a conference on human rights for 120 people at the National University of Ireland at Galway.

With an allowance from an Irish travel company, the latest group of Mitchell scholars went on impromptu road trips around the country, visiting one another at their universities almost once a moth, and some traveled together to Scotland. Also through Ms. Vargo, they went on a hiking trip in the Wicklow Mountains guided by a Dublin businessman, and they celebrated Thanksgiving together at a lawyer's Dublin home.

To use their own term, they bonded. They share an easy rapport—Ms. Mark called the group ''the world's perfect dinner party''—whether milling about at the program's closing ceremonies with political leaders like Senator Mitchell and Sinn Fein's president, Gerry Adams, or holding up the bar at the Europa Hotel.

The program's sponsors seem to feel that even that bar tab is money well spent. Gerry McCrory, 40, heads a venture capital fund in Dublin called Cross Atlantic Capital Partners that gives about $30,000 a year to the Mitchell program. He said he looked forward to when the Mitchell Scholars would positively influence the relationship between the United States and Ireland.

''It's going to be at least another 20 or 30 years until they're in a position to make those decisions,'' he said, ''but I think it's the right thing to do. It's a long-term investment.''

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INTELLIGENCE REPORT

Mr. AKAKA. Mr. President, I rise today to commend the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence for their outstanding work in reviewing the intelligence community's activities related to the terrorist attacks on September 11, 2001. The report, which was issued jointly last week by two committees, is the culmination of the hard work of the committees and their staff to inform the American people of the weaknesses in our intelligence community that need to be strengthened to prevent this type of event from occurring again.

One issue that I find particularly interesting is the focus of the Intelligence Committees' report on how the lack of employees with foreign language skills hampered the intelligence community's efforts to meet its mission. Finding Six of the report states:

Prior to September 11, the Intelligence Community was not prepared to handle the challenge it faced in translating the volumes of foreign language counterterrorism intelligence it collected. Agencies within the Intelligence Community experienced backlogs in material awaiting translation, a shortage of language specialists and language-qualified field officers, and a readiness level of only 30 percent in the most critical terrorism-related languages used by terrorists.

This finding is not surprising. Shortly after the terrorist attacks of September 11, 2001, FBI Director Robert Mueller made a public plea for speakers of Arabic and Farsi to help the FBI and national security agencies translate documents that were in U.S. possession but which were left untranslated due to a shortage of employees with proficiency in those languages. The committees' report states that prior to September 11, the Bureau's Arabic translators could not keep up with the workload. As a result, 35 percent of Arabic language materials derived from Foreign Intelligence Surveillance Act, FISA, collection was not reviewed or translated. If the number of Arabic speakers employed by the Bureau remained at the same level, the projected backlog would rise to 41 percent this year.

Unfortunately, the U.S. faces a critical shortage of language proficient professionals throughout Federal agencies. As the General Accounting Office reports, Federal agencies have shortages in translators and interpreters and an overall shortfall in the language proficiency levels needed to carry out agency missions. Further, Director of the CIA Language School has testified before the Intelligence Committees that, given the CIA's language requirements, the CIA Directorate of Operations is not fully prepared to fight a world-wide war on terrorism and at the same time carry out its traditional agent recruitment and intelligence collection mission. The Director also added that there is no strategic plan in place with regard to linguistic skills at the Agency.

The inability of law enforcement officers, intelligence officers, scientists, military personnel, and other Federal employees to decipher and interpret information from foreign sources, as well as interact with foreign nations, presents a threat to their mission and to the well-being of our Nation. It is crucial that we work to strengthen the language capabilities and in turn the security, of the United States. Both the GAO review and the Intelligence Committees' report demonstrate that action is needed to help Federal agencies more effectively recruit and retain highly skilled individuals for national security positions.

Congress has long been aware of the Federal Government's lack of skilled personnel with language proficiency. In 1958, the National Defense Education Act, NDEA, was passed in response to the Soviet Union's first space launch. We were determined to win the space race and make certain that the United States never came up short again in the areas of math, science, technology, or foreign languages. The act provided loans and fellowships to students, and funds to universities to enhance their programs and purchase necessary equipment. After the NDEA expired in the early 1960s, Congress passed the National Security Education Act in 1991, which created the National Security Education program, NSEP. This program was intended to address the lack of language expertise in the Federal Government by providing limited undergraduate scholarships and graduate fellowships for students to study foreign language and foreign area studies, and providing funds to institutions of higher learning to develop faculty expertise in the less commonly taught languages. In turn, students who receive NSEP scholarships and fellowships are required to work for an office or agency of the Federal Government in national security affairs.

While NSEP has been successful, it is obvious that more needs to be done. To address the Federal Government's lack of foreign language personnel, I introduced S. 589, the Homeland Security Federal Workforce Act, on March 11, 2003.

I am pleased to have the support of Senators DURBIN, ALLEN, VOINOVICH, WARNER, BROWNBACK, CHAMBLISS, ROCKEFELLER, and COLLINS in this effort. Our bipartisan bill would enhance the Federal Government's efforts to recruit and retain individuals possessing skills critical to preserving our national security. Through a targeted student loan repayment program and fellowships for graduate students, this legislation would help eliminate the Government's shortfall in science, mathematics, and foreign language skills.

I am pleased to note that the Committee on Governmental Affairs favorably reported S. 589 in June. When this bill comes before the Senate for consideration, I urge swift passage so that Federal agencies with direct responsibility for protecting our homeland have personnel with foreign language and other necessary skills to deter and prevent another terrorist attack.

IRAQ AND AMERICAN FOREIGN POLICY

Mr. CARPER. Mr. President, I rise to call the Senate's attention to a very important address that my distinguished senior colleague, the ranking member of the Foreign Relations Committee, delivered today on America's foreign policy and our ongoing operations in Iraq. I commend Senator BIDEN for his wise and eloquent words, and I hope that all of my colleagues will take note of this insightful address.

Senator BIDEN delivered this address today on the one-year anniversary of the bipartisan hearings he held last year as chairman of the Foreign Relations Committee, in which the committee explored many of the very questions that are bedeviling us today in post-war Iraq. Those hearings raised, before the war, all of the questions we are confronted with today with respect to how many troops we will need to maintain in Iraq and for how long, as well as how much the reconstruction of Iraq will cost and how we can best secure international cooperation to share the burdens of bringing peace and democracy to Iraq. Indeed, Chairman BIDEN said at the very first of those hearings last year, ''We need a better understanding of what it would take to secure Iraq and rebuild it economically and politically. It would be a tragedy if we removed a tyrant in Iraq, only to leave chaos in his wake.'' One can only wish that the administration had paid more attention to the questions the committee raised and some of the warnings that the committee received from the distinguished witnesses that testified during those hearings.

Senator BIDEN's speech today was an unapologetic defense of the decision to go to war in Iraq. ''Anyone who can't acknowledge that the world is better off without [Saddam] is out of touch,'' he said. ''The cost of not acting against Saddam would have been much greater, and so is the cost of not finishing the job.'' At the same time, Senator BIDEN's speech today was also a ringing affirmation of the historical tradition of bipartisan foreign policy that has been the hallmark of this institution and of the Senate Foreign Relations Committee, in particular. He suggests that today, and I quote, ''the stakes are too high and the opportunities too great to conduct foreign policy at the extremes.''

In very convincing terms, Senator BIDEN argues that we need to chart a sensible path between the prescriptions of neo-conservative purists, who affirm a strident unilateralism, and multi-lateral purists, who shrink from forcefully acting in the absence of international consensus. Again I quote: ''What we need isn't the death of internationalism or the denial of stark national interest, but a more enlightened nationalism—one that understands the value of institutions but allows us to use military force, without apology or apprehension if we have to, but does not allow us to be so blinded by the overwhelming power of our armed forces that we fail to see the benefit of sharing the risks and the costs with others.''

As Senator BIDEN argues, we need to act forcefully, but humbly in the world today. We need to be unapologetic in the post-9/11 world about fighting for the security of our people. But we need to pursue our goals, as Thomas Jefferson once said, ''with a decent respect to the opinions of mankind.'' The course that Senator BIDEN outlined today is the course we should follow, Mr. President. Ultimately, I believe that most Americans will conclude that we were right to act in Iraq. We also need to see the job through. But we need to reengage with the international community and make them partners in the noble work of securing the peace in Iraq and spreading freedom and democracy throughout the region. Again, I commend Senator BIDEN's address to my colleagues' attention, and I ask unanimous consent that the full text of it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE NATIONAL DIALOGUE ON IRAQ + ONE YEAR

(By Senator Joseph R. Biden, Jr., The Brookings Institute, July 31, 2003)

INTRODUCTION: AMERICA'S PLACE IN THE WORLD

Most Americans don't know what you and I know, that there's a war being waged in Washington to determine the direction of our foreign policy. It goes well beyond the ordinary skirmishes that are the stuff of politics and tactics. This war is philosophical. This war is strategic and its outcome will shape the first fifty years of the twenty-first century, just as the consensus behind containment shaped the last fifty years.

Right now, the neo-conservatives in this Administration are winning that war. They seem to have captured the heart and mind of the President, and they're controlling the foreign policy agenda. They put a premium on the use of unilateral power and have a set of basic prescriptions with which I fundamentally disagree. Just as I disagree with those in my own Party who have not yet faced the reality of the post-9–11 world, and believe we can only exercise power if we act multilaterally.

I don't question the motives of either the neo-conservatives or the pure multilateralists. They genuinely view the world differently than I do. Suffice it to say, in my view the neo-cons and the pure multilateralists are both wrong. What we need isn't the death of internationalism or the denial of stark national interest, but a more enlightened nationalism—one that understands the value of institutions but allows us to use military force, without apology or apprehension if we have to, but does not allow us to be so blinded by the overwhelming power of our armed forces that we fail to see the benefit of sharing the risks and the costs with others.

In my view, the stakes are too high and the opportunities too great to conduct foreign policy at the extremes.

ONE YEAR AGO

Exactly one year ago today, when I was Chairman of the Foreign Relations Committee we began a series of bipartisan hearings on America's policy toward Iraq.

Our purpose was to start a national dialogue and give the American people an informed basis upon which to draw their own conclusions. At that first hearing, I said ''President Bush has stated his determination to remove Saddam from power a view many in Congress share . . .'' and I was among them. I also said as clearly as I could ''If [removing Saddam] is the course we pursue . . . it matters profoundly how we do it and what we do after we succeed.''

Now, a year later, Saddam is no longer in power and that's a good thing. His sons Ouday and Qusay have been killed. That's another good thing. They deserve their own special place in hell. But the mission is hardly accomplished. The new day in the Middle East has not yet dawned.

We're still at war. American soldiers are still dying, one, two, three at a time. Iraq is still not secure. Still no one has told our troops that they'll have to stay for a long time in large numbers; that they'll have to tough it out. Most Americans still don't realize it's costing us a billion dollars a week to keep our troops in Iraq, and billions more in reconstruction, and revenue from Iraqi oil will not cover these costs.

And we still haven't heard a single clear statement from the President articulating what his policy is in general and, specifically, that securing Iraq will cost billions of dollars, require tens of thousands of American troops for a considerable amount of time, and that it's worth it. And, most importantly, why it's in our national interest to stay the course.

Some in my own Party have said it was a mistake to go into Iraq in the first place, and the benefit is not worth the cost. I believe they're wrong. The cost of not acting against Saddam would have been much greater, and so is the cost of not finishing the job. The President is popular. The stakes are high. The need for leadership is great.

I wish he'd used some of his stored-up popularity to make what I admit is an unpopular case. I wish the President, instead of standing on an aircraft carrier in front of a banner that said: ''Mission Accomplished'' would have stood in front of a banner that said: ''We've Only Just Begun.''

I wish he would stand in front of the American people and say: ''My fellow Americans, we have a long and hard road ahead of us in Iraq, but we have to stay in Iraq. We have to finish the job. If we don't, the following will

happen. Here's what I'll be asking of you and, by the way, I'm asking the rest of the world to help us as well. And I am confident we'll succeed and as a consequence be more secure.''

I'm waiting for that speech.

I said a year ago that, ''In Afghanistan, the war was prosecuted exceptionally well, but the follow-through commitment to Afghanistan's security and reconstruction has fallen short.''

Our failure to extend security beyond Kabul has handed most of the country to the warlords. The Taliban is regrouping. The border area with Pakistan is a Wild East of lawlessness. Afghanistan is now the number one opium producer in the world. The proceeds will fund tyrants and terrorists, who will fill the security vacuum, just as they did a decade ago. And the billion dollars the Administration is talking about sending Karzai is a year late and about 2 billion short. The failure to win the peace in Afghanistan risks being repeated in Iraq with even graver consequences.

Those failures could condemn both countries to a future as failed states, and we know from bitter experience that failed states are breeding grounds for terrorists.

If we don't write a different future, Americans will be less secure.

I said at that first hearing and I still believe today that ''We need a better understanding of what it would take to secure Iraq and rebuild it economically and politically. It would be a tragedy if we removed a tyrant in Iraq, only to leave chaos in his wake.''

But that's exactly what could happen unless we make some significant changes.

Dr. Hamri, in his report to the Secretary of Defense and in testimony before the Committee, said that the window of opportunity is closing and it's closing quickly.

THE ROAD TO BAGHDAD

Nine months ago, I voted to give the President the authority to use force. I would vote that way again today. Why? Because for more than a decade Saddam defied more than a dozen U.N. Security Council Resolutions. He lost the Gulf War, sued for peace, and was told by the U.N. what he had to do to stay in power. Then he violated those agreements and thumbed his nose at the U.N. He played cat-and-mouse with weapons inspectors and failed to account for the huge gaps in his weapons declarations that were documented by the U.N. weapons inspectors in 1998. He refused to abide by the conditions and, when he refused, it became the fundamental right of the international community to enforce those rules.

I voted to give the President authority to use force because Saddam was in violation of his agreements. He was a sadistic dictator who used chemical weapons against the Kurds and the Iranians. He killed thousands of Shiites. He invaded his neighbors, crossed a line in the sand, fired missiles into Israel. And if we'd left him alone for five years with billions of dollars in oil revenues I'm convinced he'd have had a nuclear weapon that would have radically changed the strategic equation to our detriment.

In my view, anyone who can't acknowledge that the world is better off without him is out of touch. That was the case against Saddam. The President made it well.

But then the ideologues took over and made Iraq about something else. They made it about establishing a new doctrine of preemption. And, in so doing, we lost the good will of the world. Let me be clear. We face a nexus of new threats and it requires new responses. Deterrence got us through the Cold War but it can't be the only answer now.

The right to act preemptively in the face of an imminent threat must remain part of our foreign policy tool kit, as it always has been.

But this Administration has turned preemption from a necessary option into an ill-defined doctrine. Iraq was to be the test case. In my view, Iraq wasn't about preemption—It was about the enforcement of a surrender agreement drafted by the international community and signed by Saddam.

Making Iraq the case for preemption, putting it at the heart of our foreign policy, made it harder to get the world to join us. Why? Because not one of our allies wanted to validate the preemption doctrine. Raising preemption to a doctrine sends a message to our enemies that their only insurance against regime change is to acquire weapons of mass destruction as quickly as they can.

It sends a message from India and Pakistan, to China and Taiwan, to Israel and its Arab neighbors—if the United States can shoot first and ask questions later, so can they.

Preemption demands a high standard of proof that can stand up to world scrutiny and ''murky intelligence'' is hardly enough to meet that standard.

Instead of a preemption doctrine, we need a prevention doctrine that defuses problems long before they are on the verge of exploding. And I'll be talking more about that in the coming weeks.

For now, suffice it to say, the Administration was wrong to make Iraq about preemption. But we were right to confront the challenge posed by Saddam.

Contrary to what some in my Party might think, Iraq was a problem that had to be dealt with sooner rather than later. I commend the President—He was right to enforce the solemn commitments made by Saddam. If they're not enforced, what good are they?

For me, the issue was never whether we had to deal with Saddam, but when and how. And it's precisely the when and how that this administration got wrong. We went to war too soon. We went with too few troops. We went without the world. And we're paying a price for it now.

We authorized the President to use force. Congress gave him a strong hand to play at the United Nations. The idea was simple.

We would convince the world to speak with one voice to Saddam: disarm or be disarmed. In so doing we hope to make war less likely. If Saddam failed to listen and forced us to act, we'd have the world with us.

But the Administration mis-played that hand . . . undercutting the Secretary of State allowing our military strategy to trump our diplomatic strategy. The world was convinced that we were determined to go to war no matter what Saddam did, and there were those in Europe who said they'd never go to war no matter what Saddam did or didn't do.

We insulted our allies and the U.N. weapons inspectors. We failed to be flexible in securing a second U.N. resolution. For the price of a 30-day deadline, we could have brought a majority of the Security Council along with us. We didn't.

We flip-flopped between trying to bully and bribe the Turks. We lost the option to attack from the North and as a result, we by-passed the Sunni triangle, which is the source of so much of our trouble today. And worst of all, we hyped the intelligence. I said ''hyped'', not ''lied about it.'' I don't believe the President lied. But I do believe he was incredibly ill-served by those in his administration who exaggerated the very pieces of intelligence most likely to raise alarms with the American people.

It's not just 16 words in the State of the Union. It's that consistently, in speech after speech, TV appearance after TV appearance, the most senior Administration officials left the impression with the American people that Iraq was on the verge of reconstituting nuclear weapons. In fact, the Vice President Cheney said they had already done it that it was in league with Al Qaeda and complicit in the events of 9–11; that it had already weaponized chemical agents that could kill large numbers of Americans; and that it was developing missile capability to strike well beyond its borders.

The truth is there's little intelligence to substantiate any of these claims. The truth is that there was an on-going debate within our intelligence community about each of these allegations. Yet the administration consistently presented each of these allegations as accepted facts.

I believe the purpose was to create a sense of urgency, the sense of an imminent threat, and to rally the country into war. The result is: we went to war before we had to—before we had done everything we could to get the world with us.

Does anyone in this room really, seriously believe that our interests would have been severely hurt if we had waited to go to war until this September or this October when we would have had much of the world with us? And there's another terrible result the damage done to our credibility.

What happens now when we need to rally the world about a weapons program in North Korea or Iran? Will anyone believe us?

In 1962, President Kennedy sent former Secretary of State Dean Acheson to France to brief DeGaulle about Soviet missiles in Cuba. Acheson offered DeGaulle a full intelligence report to back up the allegations. The French President said that wasn't necessary, he didn't need to see the report.

He told Acheson he trusted Kennedy. That he knew the President would never risk war unless he was sure of his facts. After the way this Administration handled Iraq, will we ever recover that level of trust with any of our key allies?

What price will we have to pay for the mistrust we've created?

GETTING IT RIGHT IN IRAQ

Last month, Senators Lugar, Hagel and I traveled to Baghdad. We left behind two of our senior staffers for an extra week to see more of the country and talk to Iraqis. We saw first hand that we have the best people on the ground. We met with military commanders with officers and with enlisted men and women and we spent time with Ambassador Bremer and the A-team he's assembled. There's no doubt we've got the right people in place. And we've made some real progress.

It was clear to us that the vast majority of the Iraqi people are happy Saddam is no longer in power. They want us to stay as long as it takes to get them back on their feet. Much of the country beyond Baghdad is relatively calm—hospitals and schools are open; the newly formed Iraqi Governing Council is encouraging; and so are the local councils, one of which we visited.

But this very real progress is being undermined by our failure so far to come to grips with some very fundamental problems, and security is problem-number-one. It's always problem-number-one. I've seen it in the Balkans. I saw it in Afghanistan. And it's just as true in Iraq. Without security, little else is possible. The problem breaks down into two parts: First, we haven't put down the opposition from forces loyal to Saddam. General Abizaid finally admitted we're facing ''guerilla war.'' Almost every day that our troops continue to get picked off, sometimes by a lone sniper, other times by roadside bombs that kill two, three, four, or more at a time. This cannot, it must not continue.

There's a short-term fix: more foreign troops to share our mission and more Iraqis

to guard hospitals, bridges, banks, and schools. If we had them, we could concentrate our troops in the Sunni triangle—where they're needed and where they can do the type of military job for which they were trained.

The second security issue is the pervasive lawlessness that makes life in Iraq so difficult for so many of its citizens. During the day, many Iraqis are afraid to leave home, go to work, go shopping even for the basic needs of their family. At night that fear makes much of Baghdad a ghost town. Without cops, there are countless reports of rapes and kidnapings.

When I was at the Baghdad police academy run by former New York City Police Chief Bernie Kerik, they told us just how far we have to go to get a functioning police force up and running.

Under Saddam, Iraqi cops rarely left their headquarters. If there was a murder, they wouldn't investigate out in the field. They'd ask people to come to them, and if they didn't—they'd get shot. We're not just RE-training Iraq's cops, we're training them from the ground up.

We've got to build back to the 18,000 police cars that are needed from the 200 available now. We've got to rebuild Iraq's major prisons, virtually all of which were burned or looted. Ultimately, only Iraqis can provide for their own security.

The Iraqi Civil Defense Corps we've begun to establish will help, but all of our experts agree that it'll take five years to train the necessary police force of 75,000 and three years to field an army of 40,000. Until then, security is on our shoulders.

Meanwhile, the Administration seems to have lost interest in the very issue they told us was the reason to go to war—Iraq's WMD. I can't fathom how we failed to secure the known WMD sites after the war, leaving them vulnerable to looting and smuggling.

And I can't understand how the Deputy Secretary of Defense could say, just last week, that he's ''not concerned about weapons of mass destruction.''

On top of these overwhelming security challenges, the country's infrastructure is suffering from almost 30 years of neglect. That certainly shouldn't have been a surprise.

Even before the war, demand for electricity exceeded supply—6000 megawatts were needed; 4000 was the capacity. There were brownouts and blackouts. Today we're not even back to 4000 megawatts and may not get there until September. It'll take several years and more than 13 billion dollars to stay even with demand. The same is true with water—we'll need five years and more than 15 billion dollars to meet Iraqi demand. This feeds the gnawing sense of insecurity that paralyzes life in the capital.

Ultimately, our goal has to be to revive Iraq's economy because idle hands, rising frustration, and 5 million AK–47s is not a recipe for security. Finally, we're doing a terrible job of letting Iraqis know how Saddam destroyed their country and that we're working to make their lives better.

In fact, when I was in Baghdad, the CPA was broadcasting just 4 hours a day. I'm told we're up to nearly 14 hours but the programming—bureaucrats reading dry, dull official scripts—makes public access television look good! Meanwhile, Al Jazeera and Iranian TV dominate the airwaves 24/7 with more sophisticated programming. The bottom line is this: Iraqis simply can't understand how the most powerful nation on earth, which toppled Saddam in three weeks, and, with exact precision, directed laser guided bombs through the side door of a house, how that all-powerful nation can't get lights turned on.

In short, Iraqis have high expectations and we're not coming close to meeting them. Some of this is out of our control but we've brought a large part of this on ourselves. And that's because the problems in Iraq today were compounded by the false assumptions this Administration made going in, and by its failure to listen to its own people and outside experts. They assumed we'd be greeted as liberators. They assumed our favorite exiles would be embraced by the Iraqi people as new leaders. They assumed that the civil service, the army, and the police would remain intact and that all we'd have to do is replace their Baathist leadership. They assumed that Iraqi oil revenues would pay for the lion's share of reconstruction. All these assumptions were wrong, wrong, wrong.

The result is: They failed to begin planning for post-Saddam Iraq until just weeks before we attacked forgetting that we began planning for post-war Germany three years before the end of World War II. They failed to plan for the looting and sabotage. They failed to account for the decay and destruction of Iraq's infrastructure. They failed to secure commitments from other countries to help pay for Iraq's reconstruction. They failed to see the critical importance of putting enough boots on the ground, both our own and those of other countries.

Back in 1999, our military planners ran an exercise that concluded we'd need 400,000 troops—not to win, but to secure Iraq. Just before we invaded, the National Security Council prepared a memo that said the number was more like 500,000. I don't know if the President read the memo—I wish he had!

We might have planned differently. We might have thought twice about trying out Secretary Rumsfeld's theory that the U.S. should put fewer boots on the ground in military conflicts. And all of this has led us into a box where we have few good choices left. If we don't change course if we don't bring others along with us; if we don't get 5,000 foreign cops to train and patrol with the Iraqis; if we don't bring in more than 30,000 foreign troops to help relieve us, as the Chairman of the Joint Chiefs says we must; if we don't get the water running; if we can't make sure that a woman can leave home or send her children to school safely; if we can't get the lights on; if we fail to bridge the expectations gap by better communicating to the Iraqi people; if paralysis of progress continues for more than a couple more months; if ALL of this happens, we'll lose not only the support of the Iraqi people but the support of the American people as the discontent and the death toll rise. At that point, I predict, this Administration will be seriously tempted to abandon Iraq. They'll hand over power to a handpicked strongman dump security and reconstruction responsibility on the U.N., and we'll lose Iraq.

Imagine if we lost Iraq. In a worst case scenario, there'd be chaos and the threat of Iranian and fundamentalist domination of the country. The Middle East peace process would likely be derailed. Iraq would become a failed state and a source of instability. We'll have jeopardized our credibility in the world. And we'll be far less secure than when we went in.

So that leaves us with three options: We can pull out, and lose Iraq. That's a bad option. We can continue to do what we're doing: provide 90 percent of the troops, 90 percent of the money, and nearly 100 percent of the deaths. That's another, really bad option. Or, we can bring in the international community and empower Iraqis to bolster our efforts and legitimize a new Iraqi government which will allow us to rotate our troops out and finally bring them home.

That to me is the clear choice.

We have to bring in our allies. And you may ask: why would they want to help? The answer is . . . it's in their interest. Iraq is in Europe's front yard. Most European countries have large Muslim populations. They have commercial interests. Stability in Iraq is vital for our European allies, and it's vital for the Arab world as well. They need to get invested just as we are.

THREE STEPS WE CAN TAKE

So what do we do to bring in the international community and sustain the support of the Iraqi as well as the American people? First, we need a new U.N. Resolution. We may not like it, but most of the rest of the world needs it if we expect them to send the troops we need and to help pay for Iraq's reconstruction. Let's keep in mind, the President personally tried for weeks to persuade India to send another 17,000, and they said ''no—not without a U.N. resolution. With such a resolution, I think we could persuade France, and Germany, and NATO to play a larger and official role to secure the peace. But not without a resolution.

We have to understand that leaders whose people opposed the war need a political rationale to get them to support building the peace. We have to understand and be willing to accept that giving a bigger role to the United Nations and NATO means sharing control, but it's a price worth paying if it decreases the danger to our soldiers and increases the prospects of stability.

Second, it's time to act magnanimously toward our friends and allies. We are a superpower and we should be magnanimous because it's not just the right thing to do, but because it's the practical thing to do. Not simply because it's consistent with our values as a nation but because if we don't make the on-going war on the ground in Iraq the world's problem, it will remain our problem alone.

The truth is, we missed a tremendous opportunity after 9–11 to bring our friends and allies along with us and to lead in a way that actually encouraged others to follow. We missed an opportunity, in the aftermath of our spectacular military victory to ask those who were not with us in the war to be partners in the peace. Instead we served 'freedom toast' on Air Force One.

The American people get it. They intuitively understand that we can't protect ourselves from a dirty bomb on the Mall in DC; a vial of anthrax in a backpack; or a homemade nuke in the hold of a ship steaming into New York harbor without the help of every intelligence service and every customs service in the world, without Interpol and yes, the French and the Germans and even the U.N.

Third, and most importantly, I said it a year ago, and I'll say it again: no foreign policy can be sustained without the informed consent of the American people. We learned that lesson in Vietnam, but we haven't applied it to Iraq. I cannot overstate the importance of keeping the American people fully informed of the risks, the costs, to the extent we know them, and the importance of staying the course in Iraq.

This Administration has been good at projecting power, but it hasn't been anywhere near as good at staying-power. Nor has it been good at convincing the American people that securing Iraq is a necessary, if costly, task—but that it's do-able.

If we learned one thing last year, it should be that the role of those of us in positions of leadership is to speak the truth to the American people—to lay out the facts to the extent we know them and to explain to the American people exactly what's expected of them in terms of time, dollars, and commitment.

Our role as leaders is not to color the truth with cynicism and ideological rhetoric but to

animate that truth with the same resilience the same dignity, the same decency, and the same pragmatic approach the American people have applied to every task and every challenge.

It's long past time for the President to address the American people in prime time, to level with us about the monumental task ahead, to summon our support.

I and most of my colleagues will stand with him.

So yes, when it comes to foreign policy, I have a fundamental difference of opinion with some in this Administration and I'll be talking more about it in the next few weeks. But that's okay because I'm reminded of the words of Senator Arthur Vandenberg who said: ''Bipartisan foreign policy does not involve the remotest surrender of free debate in determining our position. On the contrary, frank cooperation and free debate are indispensable to ultimate unity. It simply seeks national security ahead of partisan advantage. Every foreign policy must be totally debated and the loyal opposition is under special obligation to see that this occurs.''

I think it is my obligation to articulate an opposing view.

MEMORANDUM

To: Senator Carper
From: Margaret Simmons
Re: Mandatory Minimum Sentencing
Date: April 28, 2003

BACKGROUND

The Anti-Drug Abuse Act of 1986 provided mandatory minimum sentences of imprisonment for possession with intent to distribute powder and crack cocaine. In this statute Congress established a quantitative 100–to–1 sentence ratio between the two (i.e., it takes 100 times as much powder cocaine as crack cocaine to trigger the same sentence). Under this distinction, a person convicted of possession with intent to distribute a pound of powder cocaine (453.6 grams) would serve considerably less time in a federal prison than one convicted of possession with intent to distribute 5 grams of crack. The United States Sentencing Commission incorporated the ratio into its generally binding sentencing guidelines. Since enactment, it has become apparent that the incidence of this sentencing differential falls disproportionately on African-American defendants.

Instructed to study the situation, the Sentencing Commission proposed amendments that would equate crack and powder cocaine for sentencing purposes and recommended that Congress drop the 100–to–1 ratio from its own mandatory penalties. Congress rejected both the amendments and the suggestion for equation, but directed the Commission to reexamine the issue and report back recommendations reflecting more moderate adjustments.

In May 2002 the Sentencing Commission issued its report to Congress on cocaine and federal sentencing policy. In that report, the Commission recommended a three-pronged approach for revising federal cocaine sentencing policy: increase the five-year mandatory minimum threshold quantity for crack cocaine offenses to at least 25 grams (and the ten-year threshold quantity to at least 250 grams); provide direction for more appropriate sentencing enhancements within the guidelines' structure that target the most serious drug offenders for more severe penalties without regard to the drug involved; and maintain the current mandatory minimum threshold quantities for powder cocaine offenses. The Commission found that there does not appear to be evidence that the current quantity-based penalties for powder cocaine are inadequate.

DRUG SENTENCING REFORM ACT OF 2001

In the last Congress, Senator Sessions introduced legislation to reduce the disparity in punishment between crack and powder cocaine offenses, and to focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender. The legislation reduces the disparity in sentences for crack and powder cocaine form the ratio of 100–to–1 to 20–to–1. (Under state law in Delaware, the ratio is 1–to–1.) It does so by reducing the penalty for crack and increasing the penalty for powder cocaine. For example, for the five-year mandatory minimum, the bill would decrease the trigger amount for powder cocaine from 500 grams to 400 grams, and increase the trigger amount for crack cocaine from 5 grams to 20 grams.

In addition, the bill shifts some of the sentencing emphasis from drug quantity to the nature of the criminal conduct. The bill increases penalties for the worst drug offenders that use violence and employ women and children as couriers to traffic drugs. The bill also decreases mandatory penalties on those who play only a minimal role in a drug trafficking offense, such as a girlfriend or child of a drug dealer.

RECOMMENDATION

Senator Sessions legislation is a good start to address the disparities in mandatory sentencing between crack and powder cocaine, and achieves the recommended 20-to-1 sentencing ratio proposed by the Sentencing Commission. The bill does so by lowering the threshold quantities for powder cocaine, and increasing the threshold for crack cocaine.

However, the Sentencing Commission's recommendation was to leave the quantity-based penalties for powder cocaine unchanged. Given that this recommendation was unanimous, I think it should be given considerable weight. Thus, I would not recommend supporting legislation that adjusts the disparity in sentencing between crack and powder cocaine by changing the threshold amounts for powder cocaine.

In addition, Hispanic groups and civil rights groups are very opposed to Senator Sessions' legislation since his bill essentially increases the penalties for powder cocaine by lowering the amount needed to receive a mandatory sentence. In addition, the legislation does not address the 5-year mandatory minimum for simple possession of crack cocaine. Crack cocaine is the only drug that has a mandatory minimum sentence for simple possession.

Finally, Senator Biden's Subcommittee held a hearing in the last Congress to review the recommendations of the Sentencing Commission. It is clear from the transcript of that hearing that Senator Biden believes that the mandatory minimum sentencing should be changed, but he does not support Senator Sessions' approach. According to Senator Biden's staff; the Senator had been interested in developing his own legislation to address the mandatory minimum sentence issue in the last Congress. Therefore, given Senator Biden's history on this issue, from writing the original mandatory sentencing law in 1986 to his interest in adjusting this law, I would strongly recommend that you speak with him directly before taking any action on this subject.

NAACP V. ACUSPORT

Mr. LEVIN. Mr. President, last week U.S. district court judge Jack Weinstein of the Eastern District of New York found in the case of National Association for the Advancement of Colored People v. Acusport, Inc. et al. ''clear and convincing evidence'' that some gun manufacturers are guilty of ''careless practices.''

The NAACP filed the lawsuit against gunmakers and wholesalers for what they argued were negligent firearms distribution practices. The NAACP lawsuit did not seek financial relief but sought injunctive relief to force the gun industry to take meaningful steps towards safer business practices.

Judge Weinstein's decision was a broad condemnation of current business practices in the gun industry. Judge Weinstein said ''the evidence presented at trial demonstrated that defendants are responsible for the creation of a public nuisance and could, voluntarily and through easily implemented changes in marketing and more discriminating control of sales practices of those to whom they sell their guns, substantially reduce the harm occasioned by the diversion of guns to the illegal market and by the criminal possession and use of those guns.''

Although Judge Weinstein did not grant the NAACP the relief it sought, the gun industry should take no consolation in this result. In fact, relief was denied only because the court found that all New Yorkers suffered from the same kind of injuries from gun industry misconduct suffered by members of the NAACP.

The Lawful Commerce in Arms Act that recently passed the House and that has been referred to the Senate Judiciary Committee would shield negligent and reckless gun dealers from many legitimate civil lawsuits like the NAACP case. Certainly, those in the industry who conduct their business negligently or recklessly should not be shielded from the civil consequences of their actions. I urge my colleagues to oppose this bill.

THE RETIREMENT OF SHARON PETERSON

Mr. BAUCUS. Mr. President, I rise to pay tribute and express my deepest appreciation for a member of my staff who has served the U.S. Senate, me personally, and the State of Montana admirably.

Today is my State director Sharon Peterson's last day. She retires today after more than 22 year of service in the Senate.

Sharon's career in public service is the culmination of a lifetime of hard work.

Sharon became interested in public service after seeing the late Senate Majority Leader Mike Mansfield speak in Lewistown. He inspired her to give back to Montana. Which she's been doing ever since.

As a Fergus County rancher, along with her husband Garde, she has always been interested in the policies that affect Montana agriculture. And she's considered an expert in the field.

Sharon helped organize Montana Women Involved in Farm Economics—or WIFE—in 1975. This led to an appointment from President Jimmy

Carter to the U.S. Commission on Alcohol Fuels, where she served from 1979 to 1981.

I remember vividly Sharon bending my ear on ethanol. She once traveled to Washington—before she was on my staff—to advocate for increased ethanol production. I remember being late for a Capitol Hill press conference and Sharon literally dragging me by my shirtsleeves to make it on time. She was just like that—always on the move, always aggressive.

A former State Chair for the Montana Democratic Party, Sharon was very politically active. And she was a familiar face in Helena during many state legislative sessions.

Sharon joined my staff in Billings in 1981. Back then, we didn't have c-span, no e-mail, no Blackberry on Palm Pilots. We didn't even have computers in my State offices when Sharon first started. Only an old roll-paper fax or two. This made it challenging for our State operation. But they worked hard to stay in touch with Washington.

Sharon served as my scheduler for 10 years. And she was tenacious in making sure I was on time, which is, as we all here in the Senate know, not an easy task—especially back then.

I once did a work day—I work alongside Montanans at least one day a month—at the Stillwater Mine in Columbus. I was having so much fun working in the mine, I didn't want to leave. Sharon, afraid of nothing and against the caution of mine workers, came down into the mine shaft to get me to my next meeting.

She once called the kitchen of a restaurant in Choteau and told the dishwasher to get me moving.

Sharon helped organize the 1989 Montana Cattle Drive celebrating Montana's bicentennial. Again, I was having so much fun I stayed out on the drive for several days longer than I was supposed to. Sharon drove out to camp and took me to a pay phone to call my Washington staff.

Sharon helped on my first Senate campaign, in 1978. She helped deliver Fergus County, which she later realized was a lot harder than one might think.

I appointed her my State director 1993. In this role, she was a key advisor to me. She was a strong voice for Montana on agriculture, transportation, rural health and education, trade and natural resources. She fought for rural communities and Main Street businesses.

She was a tireless advocate for farmers and ranchers, helping to pass numerous farm bills and helping producers through the drought of the 1980s.

Whe organized the first of many trade trips to foreign countries.

As State Director, Sharon took great pride in making sure our State operation ran smoothly and served Montanans well. She answered my toll free line for 22 years. That's the 800 number Montanans use to get in touch with me. She was dedicated to case work. She personally helped thousands of Montanans.

For many years I have counted on Sharon to educate us on the realities of living in rural areas. She insisted we apply good Montana common sense to everything we do. She believes strongly in protecting the Montana values of doing what's right, common sense, faith, hard work, a strong connection to the land, and community.

Her Montana roots run deep. Long ago, we tried to get Sharon to move to Washington. She stayed for two weeks and went home. Montana is her home. She loves our State. I doubt she'll ever leave. Sharon's a rancher. She's a salt-of-the earth Montanan.

When I asked Sharon what the best part of the job was she said: ''The ability to help people and make Montana an even better place.''

She did both.

I'll miss her. My staff will miss her. The Senate will miss her. And most importantly the State of Montana will miss her.

She truly made ''The Last Best Place'' even better. For that, we are eternally grateful. And we wish her and Garde all the best.

NOMINATION OF PAUL MICHAEL WARNER

Mr. HATCH. Mr. President, I rise in support of the nomination of Paul M. Warner of Salt Lake City, who has been renominated by President Bush for the position of U.S. attorney for the District of Utah.

Paul Warner has had a remarkable career in public service. After graduating from the J. Reuben Clark Law School in 1976, he enlisted in the U.S. Navy Reserve Judge Advocate General Corps, where he served as both prosecutor and defense counsel. From 1982 to 1989, Mr. Warner served in the Utah Attorney General's Office, where he did tremendous work on both civil and criminal matters. In 1983, he enlisted with the Utah Army National Guard, Judge Advocate Branch, where he has risen to the rank of colonel. Since 1989 he has served in the U.S. Attorney's Office for the District of Utah, where he has worked on both civil litigation and criminal prosecution. He became the U.S. Attorney for the District of Utah in 1998 and has served ably in that office ever since.

I think it is important to have a career prosecutor with the reputation and ability of Paul Warner to lead the Federal law enforcement effort in Utah. He is a man committed to the rule of law and has a proven track record on the problems that affect Utah, notably methamphetamine proliferation and illegal reentry by criminal aliens.

Paul Warner has been able to be so effective because he has developed a great working relationship with Federal, State, and local law enforcement personnel. I believe that without exception he is respected and trusted as a skillful prosecutor and an able administrator.

Paul Warner has had several notable career achievements. Most notably he rose to the Olympic challenge of presiding over one of the largest peace time mobilizations of law enforcement personnel in United States history. I can't give him enough credit for facilitating the cooperation of Federal, State, and local law enforcement personnel that allowed the Salt Lake Olympic Games to run so smoothly. It was a tremendous undertaking, and the State of Utah, the United States of America, and the World Olympic Community owe a debt of gratitude to Paul Warner for negotiating the Herculean task of facilitating a safe environment that allowed the Salt Lake City Olympic Games to be enjoyed by so many throughout the world.

Paul Warner has also used his legal acumen and personal relationships to defuse several tense situations, including the controversies surrounding the Federal land use policies affecting Utah and the imposition of background checks at the Salt Lake International Airport following the 9/11 terrorist attacks.

Paul Warner has been honored on several occasions for his commitment to public service. He is the recipient of the United States Army Commendation Medal for meritorious service during Operation Desert Storm for legal work done in mobilizing members of the Utah Army National Guard. He later received two oak leaf clusters for meritorious service as Staff Judge Advocate. Mr. Warner was given a Special Achievement Award from the U.S. Department of Justice, and a Special Commendation from U.S. Attorney, District of Utah, for outstanding work as First Assistant U.S. Attorney. Finally, he has received the Community Relationship Award from the Salt Lake City branch of the NAACP.

Paul Warner is a man of integrity and honesty. He is a great American who has spent his career in public service. I can't say enough about this honorable and talented man. I have no doubt that he will continue to be an able U.S. attorney. He deserves a speedy confirmation by this committee and by the full Senate. I sincerely hope that my colleagues will join me in supporting his renomination to be the United States Attorney for the District of Utah.

RURAL DEVELOPMENT PROGRAMS IN MEXICO

Mr. GRASSLEY. Mr. President, on July 10, the Senate passed an amendment to S. 925, the Foreign Relations Authorization Act, to authorize $100 million for rural development programs in Mexico. This amendment authorizes funding for programs to promote microcredit lending, to promote small business and entrepreneurial development, to aid small farms impacted by the collapse of coffee prices,

and to strengthen private property ownership in rural communities.

I understand why Senator REID offered this amendment. Mexico is important to the United States, and it deserves our attention. But I voted against this amendment. Let me explain why.

A better way to improve Mexico's economy, including its rural economy, is not through foreign assistance from the United States, but through trade. As recently noted by the Ambassador of Mexico to the United States, Mexico has been transformed in recent years through trade liberalization, and in particular through the NAFTA.

Mexico's exports to the world grew from $50 billion to $160 billion between 1993 and 2001. Total trade between the United States and Mexico increased from $88 billion to $250 billion between 1993 and 2002.

Mexico's agricultural producers have shared in the benefits of NAFTA. Between 1993 and 2001, Mexican agricultural exports to the United States rose by almost 97 percent. Some 78 percent of all Mexican agricultural exports are shipped to the United States, and the United States is by far Mexico's largest agricultural export destination.

While well intentioned, increased foreign aid from the United States, such as through Senator REID'S amendment, will make little difference to the Mexican economy. Clearly, Mexico's leaders recognize that the best means of achieving a healthier Mexican economy, including Mexico's rural economy, is through continued strong trade ties with the United States.

Regardless, some of these same leaders seem to be losing interest in maintaining strong trade relations between our countries. They are doing this by attempting unilaterally to renegotiate agricultural provisions of the NAFTA.

Mexico has imposed, or threatened to impose, restrictions on the importation of a variety of U.S. agricultural products. These products include pork, beef, corn, and high fructose corn syrup, all of which are major Iowa commodities. I spoke on this situation just last month on the Senate floor, so I will not go into the specifics on Mexico's trade restrictions on these commodities.

Given barriers imposed by Mexico on U.S. agricultural products, now is clearly not the proper time to increase foreign aid to Mexico. Mexico's trade policies are harming farmers in Iowa and other states. Providing more foreign aid to Mexico sends the wrong signal. I realize that Senator REID's amendment to increase foreign aid has already passed the Senate. But until such time as Mexico's agricultural trade barriers are removed, I urge Senators to keep them in mind when voting on any future legislation involving foreign aid for Mexico.

At the same time, I hope that Mexico will realize that by not abiding by its NAFTA commitments, and by thus threatening its trade relations with the United States, it is doing little to improve the lives of rural Mexicans.

In fact, any reduction in trade between our two countries would likely lead to increased economic hardship in Mexico. Such a situation would benefit neither Mexico nor the United States.

Once again, as I did last month, I urge officials in Mexico to consider the effects that Mexico's barriers to imports of U.S. agricultural products are having on overall trade relations between the United States and Mexico. Mexicans, including those living in rural areas, have much more to gain from closer economic ties to the United States than from increased foreign aid.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in Medford, OR. On January 30, 2003, three Oregon National Guardsmen beat a homeless man then attacked a Medford motel owner whom they believed was an Arab. One of the men committed suicide after the attack and the other two pled guilty to hate-related charges.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

FAMILY FARMER BANKRUPTCY PROTECTION, H.R. 2465

Mr. LEAHY. Mr. President, I am pleased that the Senate is finally considering legislation to renew family farmer bankruptcy protection, which expired on July 1.

More than a month ago, on June 23, the House of Representatives passed H.R. 2465 by an overwhelming vote of 379–3. This legislation will retroactively renew and extend family farmer bankruptcy protection until January 1, 2004. Senator FEINGOLD, Senator GRASSLEY and I have been urging for weeks that the Senate majority leadership bring up this House-passed bill to retroactively renew Chapter 12 of the Bankruptcy Code.

Senator GRASSLEY and I introduced S. 1323, the companion bill to this legislation to temporarily extend these protections that our farmers have come to rely upon. But this is just a short term fix. We need to stop playing politics and permanently reauthorize the Chapter 12 family farmer protections.

Too many family farmers have been left in legal limbo in bankruptcy courts across the country because Chapter 12 of the Bankruptcy Code is still a temporary measure. This is the sixth time that Congress must act to restore or extend basic bankruptcy safeguards for family farmers because Chapter 12 is still a temporary provision despite its first passage into law in 1986. Our family farmers do not deserve these lapses in bankruptcy law that could mean the difference between foreclosure and farming.

In 2000 and 2001, for example, the Senate—then as now controlled by the other party—failed to take up a House-passed bill to retroactively renew Chapter 12. As a result, family farmers lost Chapter 12 bankruptcy protection for 8 months. Another lapse of Chapter 12 lasted more than 6 months in the previous Congress. At the end of June, Chapter 12 lapsed once again. Enough is enough. It is time for Congress to make Chapter 12 a permanent part of the Bankruptcy Code to provide a stable safety net for our nation's family farmers.

Last year, I strongly supported former Senator Carnahan's bipartisan amendment to make Chapter 12 permanent as part of the Senate-passed farm bill. The Senate unanimously approved the Carnahan amendment by a 93–0 vote. Unfortunately, the House majority objected to including the Carnahan amendment in the farm bill conference report and agreed to an extension of Chapter 12 only through the end of 2002. Thus, at the tail end of the last Congress, we had to pass yet another six-month extension of basic bankruptcy protection for family farmers.

In the bipartisan bankruptcy reform conference, we again tried to make Chapter 12 permanent and update and expand its coverage. During our conference negotiations, we adopted most of the Senate-passed provisions, including those authored by Senator GRASSLEY to make Chapter 12 permanent and those authored by Senator FEINGOLD to strengthen Chapter 12 to help our family farmers with the difficulties they face.

Unfortunately, the House majority again scuttled our bipartisan efforts by failing to pass the rule to consider the bipartisan conference report on the Bankruptcy Abuse Prevention and Consumer Protection Act.

It is time to end this absurdity and make these bankruptcy protections permanent. Everyone agrees that Chapter 12 has worked. When this bill passed in the House, Chairman SENSENBRENNER praised Chapter 12, but then only proposed reauthorizing it for 12 months. He admitted that the only reason his bill, which we are finally passing today, did not permanently reauthorize Chapter 12 was because it is being used as leverage for the controversial larger bankruptcy reform bill. That is unfortunate.

I will continue to work hard with Senator GRASSLEY, Senator FEINGOLD and others on both sides of the aisle to pass legislation that once and for all

assures our farmers of permanent bankruptcy protection to keep their farms. In the meantime, we should quickly pass this legislation and end another lapse in this basic bankruptcy protection for our family farmers.

HAWAII AND SHIPPING CONTAINER SECURITY

Mr. AKAKA. Mr. President. I rose today to address the continued need to secure our Nation's shipping containers.

The U.S. economy is heavily dependent on the normal flow of commerce and the security of our Nation's ports. Over the past 6 years, commercial cargo entering America's ports has nearly doubled. About 7 million shipping containers arrive in U.S. seaports each year.

The Department of Homeland Security recently proposed new regulations to improve shipping container security by requiring advance information in electronic format for cargo entering and exiting the United States.

In my view, the Department needs to do more. To improve container security we must ensure that shipping container security programs are effective by having the right personnel and the right management strategies in place.

Currently the Customs Service administers two container security programs within the Department of Homeland Security: the container security initiative, known as CSI, and the customs-trade partnership against terrorism, or C–TPAT. By 2004, the Department plans to increase the funding for CSI fourteenfold and for C–TPAT by 50 percent.

A July 2003 General Accounting Office, GAO, review on container security programs raises concerns that the Customs Service has not taken the steps required to ensure the long-term success and accountability of CSI and C–TPAT. According to the GAO report, Customs has reached a critical point in the management of CSI and C–TPAT and must develop plans to address workforce needs to ensure the long-term success of these programs.

As a Senator from a State reliant on shipped products, I understand the importance of container security. My State is uniquely vulnerable to disruptions in the normal flow of commerce. In fact, 98 percent of the goods imported into Hawaii are transported by sea.

Honolulu Harbor received more than 1 million tons of food and farm products and over 2 million tons of manufactured goods per year. In 2002, Honolulu received 1,300 foreign ships and about 300,000 containers. Over 8 million tons of these goods arrive at Honolulu Harbor, which receives one-half of all cargo brought into the State.

This is why I support GAO's recommendation that Customs develop strategic plans that clearly identify the objectives the programs are intended to achieve and to enhance performance measures.

I urge the Department of Homeland Security to implement GAO's recommendation by developing workforce plans and strategies to strengthen container security and to attract, train, and retain workers within CSI and C–TPAT. This is no small challenge. By the end of 2004, Customs expects to hire 120 staff for CSI and increase staffing levels in C–TPAT by fifteenfold. Moreover, it is estimated that 46 percent of the Customs workforce will be eligible to retire by 2008.

Now more than ever, agencies must have the plans and strategies in place to recruit personnel with the skills necessary to protect our country. As the U.S. Commission on National Security/21st Century concluded in 2001:

> . . . [T]he maintenance of American power in the world depends upon the quality of U.S. government personnel, civil and military, at all levels . . . The U.S. faces a broader range of national security challenges today, requiring policy analysts and intelligence personnel with expertise in more countries, regions, and issues.

To meet these national security challenges, workforce and strategic planning for CSI and C–TPAT deserve the full attention of the Department of Homeland Security.

Such attention is critical for a State like Hawaii that is uniquely dependent on shipping of goods. The potential consequences of a terrorist incident using a shipping container are, in the words of Customs Service Commissioner Bonner,'' . . . profound . . . no ships would be allowed to unload at U.S. ports after such an event.''

I look forward to working with the Department to ensure that the foundation is in place for CSI and C–TPAT to secure shipping containers over the longterm.

HONORING OUR ARMED FORCES

SPECIALIST MICHAEL DEUEL

Mr. THOMAS. Mr. President, I rise today to speak about a young man from my State who selflessly performed as his country asked. While doing so Army SP Michael R. Deuel was killed in Iraq on June 18 while on guard duty at a propane distribution center.

Michael was a good soldier and served proudly in the 325th Infantry Regiment's 82nd Airborne Division. He comes from a family of military tradition that he carried with him. It was the Air Force that brought the Deuel family to Wyoming where both parents served on Wyoming's own F.E. Warren Air Force Base.

It is particularly important that at a time like this, as we address legislation and we prepare to adjourn for the month of August and return to our homes to meet with constituents that we take time to remember soldiers such as Specialist Deuel. These are the brave souls who give everything to secure the peace.

Michael joined the Army so he could learn to parachute. Eventually he wanted to become a smoke jumper and fight forest fires. This too is a particularly dangerous job, and as we see through this year's fire season it is critical to the survival of our towns and rural communities in the West. Michael's decision to be in the army and his goals for life after the Army paint a picture of a young man committed to his country and his fellow Americans.

As operations continue in Iraq and the noose tightens around the last remnants of the regime, I offer America's thanks to Michael Deuel and to his family. It takes a special person to answer the call to public service. It is challenging and dangerous. America remains strong and steadfast because of the courage that they have shown in the face of danger.

Thank you for your service and sacrifice. May God bless SP Michael Deuel of the 82nd Airborne Division and may God continue to bless the United States of America.

Mr. BIDEN. Mr. President, I rise today to speak in support of Karen Tandy's nomination to be Administrator of the Drug Enforcement Administration. I am pleased that the Senate confirmed her nomination last night.

I had an opportunity to meet with Ms. Tandy a few weeks ago in my office and I was quite impressed by her. With more than a quarter century of experience in drug enforcement, I believe that she is not only well qualified to be the DEA Administrator, but that she will also bring a passion for drug policy to the job.

Both in her work as a prosecutor and in leadership positions at the Justice Department, Ms. Tandy's focus has been on drug trafficking, money laundering and asset forfeiture. She has served as an Assistant U.S. Attorney in Virginia and Washington State, Chief of Litigation in the Asset Forfeiture Office and Deputy Chief of the Narcotics and Dangerous Drugs Section at Main Justice. For the past 4 years she has served as Associate Deputy Attorney General and the Director of the Organized Crime Drug Enforcement Task Force (OCDETF) program. During that time she has focused the OCDETF program and provided tremendous leadership.

Her nomination has the endorsement of a number of well-respected organizations including the Fraternal Order of Police, the National Troopers Association, the Association of Former Narcotics Agents, the National Narcotics Officers' Association Coalition, the Community Anti-Drug Coalitions of America, the County Executives of America, and the International Union of Police Associations.

Ms. Tandy comes to the DEA at a time when both Federal and State resources for drug investigations are shrinking. I believe that she will have a difficult time fighting for scarce resources and keeping the drug issue on the national agenda.

After September 11, the FBI transferred 567 agents from counterdrug investigation to counter-terrorism investigations and the DEA was left to fill in the gap without adequate funding. The President's 2004 budget only provides funding for an additional 233 Special Agents. By shutting down popular programs such as the Mobile and Regional Enforcement Teams, DEA has been able to shuffle around 362 agents, making them look like new agents when they are not.

The magnitude of the gap left by the FBI is quite troubling. According to a recent GAO report, the number of FBI Agents working on drug cases has decreased by more than 62 percent, from 891 to 335, since September 2001. And the number of new FBI drug cases has plummeted from 1,825 in fiscal year 2000 to only 310 in the first half of fiscal year 2003.

It is clear that the DEA will need more resources if it is expected to fill the sizeable void left by the FBI. That is why I joined with twelve other Senators to write to the appropriators urging that they provide more money for the DEA to be able to do its job. I hope that at the end of the day the Congress will be able to give them more money than the President requested.

Another issue which relates closely to the work of the DEA, is the Illicit Drug Anti-Proliferation Act, legislation which I authored that became law as part of the PROTECT Act in April. The bill provides Federal prosecutors the tools needed to combat the manufacture, distribution or use of any controlled substance at any venue whose purpose is to engage in illegal narcotics activity. Rather than create a new law, it merely amends a well-established statute to make clear that anyone who knowingly and intentionally uses their property—or allows another person to use their property—for the purpose of distributing or manufacturing or using illegal drugs can be held accountable, regardless of whether the drug use is ongoing or occurs at a single event.

I introduced this legislation after holding a series of hearings regarding the dangers of Ecstasy and the rampant drug promotion associated with some raves. For the past few years Federal prosecutors have been using the so-called ''crack house statute''—a law which makes it illegal for someone to knowingly and intentionally hold an event for the purpose of drug use, distribution or manufacturing—to prosecute rogue rave promoters who profit off of putting kids at risk. My bill simply amended that existing law in two ways. First, it made the ''crack house statute'' apply not just to ongoing drug distribution operations, but to ''single-event'' activities, including an event where the promoter has as his primary purpose the sale of Ecstasy or other illegal drugs. And second, it made the law apply to outdoor as well as indoor activity.

Although this legislation grew out of the problems identified at raves, the criminal and civil penalties in the bill would also apply to people who promoted any type of event for the purpose of illegal drug manufacturing, sale, or use. This said, it is important to recognize that this legislation is not designed in any way, shape or form to hamper the activities of legitimate event promoters. If rave promoters and sponsors operate such events as they are so often advertised—as places for peopled to come dance in a safe, drug-free environment—then they have nothing to fear from this law. In no way is this bill aimed at stifling any type of music or expression—it is only trying to deter illicit drug use and protect kids.

I know that there will always be certain people who will bring drugs into musical or other events and use them without the knowledge or permission of the promoter or club owner. This is not the type of activity that my bill addresses. The purpose of my legislation is not to prosecute legitimate law-abiding managers of stadiums, arenas, performing arts centers, licensed beverage facilities and other venues because of incidental drug use at their events. In fact, when crafting this legislation, I took steps to ensure that it did not capture such cases. My bill would help in the prosecution of rogue promoters who intentionally hold the event for the purpose of illegal drug use or distribution. That is quite a high bar.

I am committed to making sure that this law is enforced properly and have been in close contact with officials from the Drug Enforcement Administration to make sure that the law is properly construed. That is why I was concerned by press reports about a DEA Agent in Billings, Montana who misinterpreted the Illicit Drug Anti-Proliferation Act when he approached the manager of the local Eagles Lodge to warn her that she may be violating the new law if the Lodge allowed the National Organization to Reform Marijuana Laws (NORML) to have a fundraiser at their facility.

I was troubled to hear this because, according to press reports, the Eagles Lodge had no knowledge that there might be drug activity at their location before the DEA approached them. And following the DEA Agent's misguided advice based on an inaccurate understanding of the law, the Lodge decided to cancel the NORML event, leading to an outcry from various groups that the new law has stifled free speech.

As I mentioned, the law only applies to those who ''knowingly and intentionally'' hold an event ''for the purpose of'' drug manufacturing, sale and use. Based upon my understanding of the facts around the NORML fundraising incident, the Eagles Lodge did not come anywhere close to violating that high legal standard.

I had my staff meet with the DEA chief counsel's office to discuss the Eagles Lodge incident and DEA's interpretation of the law. The DEA assured my office that they shared my understanding of the law and that this interpretation of the statute was conveyed to all DEA field offices shortly after the bill was signed into law.

In a June 19, 2003, letter to me from DEA Acting Administrator William B. Simpkins, the DEA acknowledged that the Special Agent ''misinterpreted'' DEA's initial legal guidance on the law and ''incorrectly'' suggested to the Eagles Lodge that the law might apply to the NORML fundraiser. DEA conceded that ''[r]egrettably, the DEA Special Agent's incorrect interpretation of the statute contributed to the decision of the Eagles Lodge to cancel the event.'' In response to this misguided interpretation of the law, the DEA issued on June 17, 2003, supplemental guidance in a memo to all DEA field agents making clear that:

> property owners not personally involved in illicit drug activity would not be violating the Act unless they knowingly and intentionally permitted on their property an event primarily for the purpose of drug use. Legitimate property owners and event promoters would not be violating the Act simply based upon or just because of illegal patron behavior.

I have expressed clearly to Ms. Tandy my expectation that the law will be applied narrowly and responsibly. Ms. Tandy has confirmed that under her direction the DEA will implement the law as it was intended, targeting only those events whose promoters knowingly and intentionally allow the manufacture, sale or use of illegal drugs. In the DEA's June 19, 2003 letter to me, it noted that its initial May 15, 2003 guidance:

> informed [DEA] personnel that [the law's] requirements of 'knowledge' and 'intent' were not changed by the [new] Act. Accordingly, legitimate event promoters, such as bona fide managers of stadiums, arenas, performing arts centers, and licensed beverage facilities should not be concerned that they will be prosecuted simply based upon or just because of illegal patron activity.

Obviously, DEA's May 15th guidance was not sufficient to prevent the unfortunate Eagles Lodge incident but it reveals the Agency's understanding and intent not to target and prosecute the sorts of legitimate businesses cited above. As this is a new law, Ms. Tandy agrees that DEA must and will redouble its efforts in training its agents on the proper legal interpretation.

Finally, let me conclude by making two final responses to some critics of my law who have claimed; one, that it stretches the law beyond its original intention, and two, that it creates a legal standard that will permit innocent businessmen, concert promoters, even homeowners to be prosecuted for the drug use of those who come to their property. Both charges are wrong, as I will now explain.

First, my law amended section 856 of Title 21, U.S. Code. Section 856 became law in 1986. While section 856 has become known popularly as the ''crack house statute,'' it has always been

available to prosecute any venue—not just crack houses—where the owner knowingly and intentionally made the property available for the purpose of illegal drug activity. This fact has long been recognized by the Federal courts. As the Ninth Circuit Court of Appeals—the most liberal Federal appellate court in the Nation—said: ''There is no reason to believe that [section 856] was intended to apply only to storage facilities and crack houses.'' [*United States* v. *Tamez*, 941 F.2d 770, 773 (9th Cir. 1991).] Or, in the words of the Fifth Circuit Court of Appeals: ''it is highly unlikely that anyone would openly maintain a place for the purpose of manufacturing and distributing cocaine without some sort of 'legitimate' cover—as a residence, a nightclub, a retail business, or a storage barn.'' [*United States* v. *Roberts*, 913 F.2d 211, (5th Cir. 1990).]

The suggestion by some that my law expanded section 856 to entities other than traditional crack houses is simply untrue. Rather, in the 17 years section 856 has been on the books, it has been used by the Justice Department to prosecute seemingly ''legitimate businesses'' used as a front for drug activity. Specifically, section 856 has been used against motels, bars, restaurants, used car dealerships, apartments, private clubs, and taverns. [See *United States* v. *Chen*, 913 F.2d 183 (5th Cir. 1990); *United States* v. *Bilis*, 170 F.3d 88 (1st Cir. 1999); *United States* v. *Meschack*, 225 F.3d 556 (5th Cir. 2000); *United States* v. *Tamez*, 941 F.2d 770 (9th Cir. 1991); *United States* v. *Roberts*, 913 F.2d 211 (5th Cir. 1990); *United States* v. *Cooper*, 966 F.2d 936 (5th Cir. 1992); *Huerd* v. *United States*, 1993 U.S. App. LEXIS 2949 (Feb. 10, 1993, 9th Cir.).] The bottom line is that if a defendant hides behind the front of a legitimate business, or allows a drug dealer to do so on their property, they should be held accountable. Just as the criminal law punishes the defendant who ''aids and abets''—like the getaway driver in a bank robbery ring—section 856 has always punished those who knowingly and intentionally provide a venue for others to engage in illicit drug activity.

The second point I will make is that my law does not—does not—change the well-established legal standard of section 856 which is required to secure a criminal conviction. Some critics of my law suggest that Congress just created a new, incredibly low legal threshold for prosecution under my law. In fact, it is the exact opposite. For 17 years, section 856 has required a high burden of proof, and my law does not change that standard at all. So let's get our facts straight.

In order to convict a defendant under section 856, the Justice Department needs to prove 2 things beyond a reasonable doubt—the highest legal standard in our justice system. Specifically, the government must prove that the defendant one, ''knowingly and intentionally'' made their property available, and two, ''for the purpose'' of illegal drug distribution, manufacture or use. These are 2 high hurdles the government must first pass before a defendant can be convicted under section 856. Let me briefly discuss both of these legal elements. As will become quite clear, the Federal courts interpreting section 856 have consistently rejected the very broad interpretations of the statute many critics now assert will result from my law.

Federal courts construing the ''knowledge'' and ''intent'' prong of section 856 have consistently held this to be a very high bar. It's not enough for a defendant to simply think, or have reason to believe, that drug use could occur on their property. Actual knowledge of future drug use, coupled with a specific intention that such use occur, is required. One Federal court discussing the knowing and intentional standard put it this way:

> an act is done ''knowingly'' if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. The purpose of adding the word ''knowingly'' is to insure that no one will be convicted for an act done because of mistake or accident, or other innocent reason. Actual knowledge on the part of the defendant that she was renting, leasing or making available for use the [property] for the purpose of unlawfully storing, distributing, or using a controlled substance is an essential element of the offense charged. . . . An act is done ''intentionally'' if done voluntarily and purposely with the intent to do something the law forbids, that is, with the purpose either to disobey or to disregard the law. . . . It is not sufficient to show that the defendant may have suspected or thought that the [property] [was] were being used for [illicit drug activity]. [*Chen*, 913 F.2d at 187.]

As explained by the Federal courts, then, section 856 means what it says—the law only applies to defendants who have actual knowledge that their property will be used for drug use and who intend that very outcome. As a result, section 856 could never be used—as some critics have irresponsibly suggested—against the promoters of a rock concert whose patrons include some who are suspected of doing drugs during live music performances. In this way, section 856 is very different than other laws proposed which would impose a ''reckless'' standard—holding, for example, a concert promoter liable where they had reason to believe that drug use might occur.

For example, a bill introduced in the House would create criminal liability for anyone who ''knowingly promotes any rave, dance, music, or other entertainment event, that takes place under circumstances where the promoter knows or reasonably ought to know that a controlled substance will be used or distributed.'' I disagreed with this approach because it would have replaced the high legal standard of section 856, on the books for 17 years, with a much lower standard where a concert promoter could be prosecuted for the illicit drug activity of patrons for which the promoter had no actual knowledge. When I wrote section 856 17 years ago, I and my colleagues required actual knowledge of illicit drug activity. Actual knowledge is still the standard today.

Let me now briefly discuss the second prong under section 856, the requirement that the defendant make their property available ''for the purpose'' of illicit drug activity. Again, courts have interpreted this prong in a way to ensure that section 856 cannot be used against innocent property owners where some incidental drug use occurs on their premises. One Federal court started its discussion of the purpose prong by noting that '''purpose' is a word of common and ordinary, well understood meaning: it is 'that which one sets before him to accomplish; an end, intention, or aim, object, plan, project.''' [*Chen*, 913 F.2d at 189.] Thus, Federal courts have noted that

> it is strictly incumbent on the government to prove beyond a reasonable doubt not that a defendant knowingly maintained a place where controlled substances were used or distributed, but rather that a defendant knowingly maintained a place for the specific purpose of distributing or using a controlled substance. [Id.]

Accordingly, the courts have interpreted that ''purpose prong'' of section 856 to prevent prosecution of defendants who knowingly allowed drug use on their property. In so doing, the courts have recognized that it's not enough to simply know that illicit drug activity is occurring on one's property; the property owner must be maintaining the property for that specific purpose. This is particularly true when section 856 is used against a ''non-traditional crack house,'' such as a residence or business. In fact, a federal appellate court reversed a section 856 conviction against a defendant who had allowed her son to deal drugs out of his bedroom. There was evidence that his mother, the defendant, assisted him in his drug dealing. While the court sustained her conviction under a count of aiding and abetting, it reversed her conviction under section 856, finding that while she knowingly allowed drug dealing on her property, the primary purpose of her apartment was as a residence, not as a venue for illicit drug activity. As the court observed:

> manufacturing, distributing, or using drugs must be more than a mere collateral purpose of the residence. Thus, 'the ''casual'' drug user does not run afoul of [section 856] because he does not maintain his house for the purpose of using drugs but rather for the purpose of residence, the consumption of drugs therein being merely incidental to that purpose.' We think it is fair to say, at least in the residential context, that the manufacture (or distribution or use) of drugs must be at least one of the primary or principal uses to which the house is put. *United States* v. *Verners*, 53 F.3d 291, 296 (10th Cir. 1995).

This analysis makes clear that section 856 cannot be used—as critics of my law claim—against a concert promoter for the incidental drug use of their patrons or against a homeowner for the incidental drug use of a guest at a backyard barbeque. Just as section

856 ''[does not] criminalize simple consumption of drugs in one's home,'' [*United States* v. *Lancaster*, 968 F.2d 1250, 1253 (D.C. Cir. 1992)], it cannot be used to prosecute innocent event promoters, venue owners, or other property owners for the incidental drug use of the patrons or guests.

Here is the bottom line: Section 856 has been on the books for 17 years and I'm unaware of it ever being used to go after a concert promoter, a venue owner, or a private citizen for the incidental drug use of their patrons or guests. Why? Because, as the Federal court decisions I have briefly reviewed today show, we wrote into law a high burden of proof to make sure that innocent actors don't get prosecuted. If you don't know for example, that the guy renting your arena plans to sell drugs, you are off the hook. If you don't intend for the guy renting your arena to sell drugs, you are off the hook. And if you don't intend that the guy renting your arena do so for the specific purpose of selling drugs, you are off the hook.

So let's get our facts straight here. It is just not helpful for critics of section 856 to run around screaming that the ''sky is falling,'' when it has not fallen for 17 years and has no reason to start now. As stated earlier, innocent actors have nothing to fear from this statute and I intend to monitor the enforcement of the Illicit Drug Anti-Proliferation Act closely to make sure that it is used properly. If someone uses a rave, or any other event, as a pretext to sell ecstasy to kids, they should go to jail, plain and simple. But that sad reality should not prevent responsible event promoters and venue owners around this country from putting on live music shows and other events, just because some of their patrons will inevitably use drugs.

In closing, Asa Hutchinson left some big shoes to fill over at DEA, but I believe that Ms. Tandy is up to the task. And it is wonderful that she will be the first woman to head the DEA. I congratulate her on her confirmation.

RECONSTRUCTION OF IRAQ

Mr. ROCKEFELLER. Mr. President, this week, we have heard from many of the Administration's representatives, including several who testified before the Foreign Relations Committee on Tuesday, that our reconstruction efforts in Iraq are going much better that we read in the press reports, especially in the north and the south of the country. I don't dispute that: I was in Iraq earlier this month, and I saw the really remarkable efforts U.S. troops and our reconstruction authorities are making.

But I want to state clearly: Out in our states, public support is ebbing much more quickly than one reads in the Washington media.

There is growing concern about the steady and growing stream of combat fatalities and, as importantly, a sense that we have no strategy for stopping them.

There is great frustration over the extension of military tours of duty in Iraq, something that is especially disruptive to the National Guardsmen and Reservists who are playing such an important role in Iraq.

Last week, for example, an Air National Guard unit from Charleston, the 130th Airlift Wing, was told that rather than have the entire unit return to West Virginia in Early August, as scheduled, half the unit will need to stay on in the Middle East until the end of the year. And before the members of the 130th could even inform their families directly, their relatives back in West Virginia learned this disappointing news from the local papers.

There is increasing unease about the cost of our financial commitments in Iraq, particularly at a time of growing domestic deficits, and our failure to line up significant international contributions.

Americans are a patient people. Our 50-year commitments to Korea, Japan, and NATO attest to that. But the American people insist on information. Our international engagements have succeeded where past Presidents have laid out what our national mission is, how our vital interests are involved, what we anticipate the cost may be, and what our plans are for an exit strategy or to get other countries to share an equitable portion of the burden.

When we don't have that, public support vanishes. There is a tendency among some in Washington to dismiss this as some sort of ''Somalia syndrome.'' But it is not just a passing phenomenon—it's a fundamental part of who we are as a people.

It reflects that contrary to some of the characterizations out there, Americans are not naturally imperialists, and we are not warmongers. And while we believe other people should enjoy the freedoms we cherish, we are not seeking to remake the world in our image. We support our global commitments when we feel America's vital national interests are at stake, and that this is part of a clear and coherent strategy by our political leadership.

When America went to war in March, it commanded the support of a significant majority of Americans. But the administration must realize: It is in danger of losing that support. One can see it in the polls; I definitely hear it when I return to West Virginia. And the change is most pronounced in many people who supported the war back in the spring. They are losing confidence that the administration has a strategy to get our young men and women out of Iraq, and to ensure their safety up until that point.

And it is leading some people to clutch at optimistic, maybe even unrealistic ''quick fix'' solutions, like suggesting we dump the entire Iraq operation into the lap of the United Nations, when Kofi Annan has basically said the U.N. has no interest in taking up the U.S. role in Iraq.

This worries me deeply. America's willingness to stay the course in Iraq isn't a partisan issue. It is, I believe, a vital national priority. America created the current situation in Iraq, and we must make it succeed. It is a fundamental test of American security and American credibility, and it is being watched closely by our foes and our friends alike.

If America withdraws from Iraq before we are able to reconstitute a solid Iraqi government backed up by strong political institutions, we will leave behind a chaotic situation that will quickly become a textbook for other enemies who wonder how to defeat America when our combat forces are unstoppable.

And if the reconstruction in Iraq does not lead to a stable state, it will become impossible to line up allies for future such operations. Even the handful of countries working with us to make Iraq succeed—the British, and the Spaniards and Italians, and the Poles—wills steer clear of us.

It is not too late to turn this around. But is will require clear, consistent communication from the very top of this administration.

In recent weeks, we have learned, in rather haphazard ways, from various administration officials, that we are facing a guerrilla war in Iraq that is targeting American troops with increasing precision, that the financial cost of our occupation is running at twice the level projected, that troop deployments in Iraq will likely be extended, and that some of the countries we were hoping would help share the burden in Iraq are getting cold feet. And frankly, getting complete information has been like pulling teeth, and only reinforces the growing perceptions that decision are being made in a reactive way. I'm sure there are some people who are telling the President, ''stay away from the bad news''—and that is why it is left to officials like Jerry Bremer or General Abizaid to do the honest talking.

The American people need to hear, from the President, not just what a great job our troops did in the initial combat phase, but also why many of our predictions were wrong; what the administration plans to do about it, including getting more international support; and why it is important that we not let these setbacks deter us. Unless we hear some plain, honest talking from the President about how we are dealing with the post-combat challenges in Iraq, I am convinced there will be dramatic further erosion in support for staying the course in Iraq. And I think that is something none of my colleagues here in the Senate would feel good about.

ADDITIONAL STATEMENTS

THE PERILS FACING OUR GRADUATING COLLEGE STUDENTS

● Mr. AKAKA. Mr. President, the national unemployment rate hit a 9-year high of 6.4 percent in June. We have lost more than 3.1 million private sector jobs since 2001, which is adversely impacting many of our recent college graduates who are finding it difficult to secure employment in a market that is not producing enough jobs. The Bureau of Labor Statistics has released findings that show for this same period that the unemployment rate for 20 to 24 year olds has risen from 7.2 percent to 10.7 percent.

The National Association of Colleges and Employers, which is a nonprofit association that provides resources to help career services and recruitment professionals, conducted a survey this past spring that found ''corporate hiring has fallen by 36 percent since 2001; 42 percent of employers say they are cutting the number of college graduates they hire; and nearly 71 percent of Government/nonprofit employers say they expect to hire fewer new college graduates this year.'' This information is very troubling to me because the state of our economy has restricted unemployment opportunities and exacerbated personal debt for young men and women graduating from college.

As our college graduates look to their future, many of them will already have accrued an excessive amount of debt ranging from student loans to credit cards. I have been working to shed light on this problem which is only getting worse, the problem of economic and personal financial illiteracy among our youth.

Accumulation of credit card debt by college students has become an issue nationwide. Credit cards are easy to get; many students are able to obtain a credit card by simply submitting a copy of their school identification card. They are acquiring and using credit cards at a greater rate than ever before, without completely understanding the credit system and accrued interest. Many of these students are not adequately educated about using and paying off a credit card. Rather, many are being enticed by gimmicks to apply for a credit car. A quick Internet search can reveal dozens of sites that provide myriad of opportunities for students to obtain a credit card. Some of these sites offer credit card limits of up to $5,000. Others suggest that one could use the card to purchase books, pizza and tuition, and also earn bonus points for free music CDs. Other inducements are offered, such as a free movie ticket for those who have good credit.

With college students finding it harder to seek gainful employment upon graduating, one would hope that they would at least have a greater understanding of how to best manage their personal finances. It would have been beneficial for these graduates to have learned the essentials of money management and personal finance before leaving college, and even before leaving high school. However, we still have much to do in this area.

According to the 2002 National Jump$tart Survey, economic and financial literacy scores have declined since the Jump$tart Coalition for Personal Financial Literacy conducted its first survey of seniors in high school back in 1997. Of the high seniors who took the survey, 68.1 percent them failed, demonstrating a clear lack of understanding of the basic fundamentals of economics and personal financial management.

We have also seen an increase in personal bankruptcy filings and, if one were to couple that with the lack of jobs available for graduating students, we see that many of our students are well on the road to financial crisis, if they are not already there. Although the Department of Education has found that the default rate on student loans has decreased substantially, it has found the dollars in default remain high. This means that students defaulting on their loans have a larger debt load, which may cause them to file for bankruptcy before they even begin a career.

In the 2002–2003 fiscal year, American lenders made about $31 billion in consolidated student loans, averaging about $27,000 each. Furthermore, 45 percent of college students are in credit card debt, with the average debt being $3,066. Our students are accruing large amounts of debt without a clear understanding of how to manage their finances. As unemployment continues to rise and the job market remains bleak, we must empower our students with a greater understanding of economic and personal finance. Although improved financial literacy is not the complete solution to their problems, it can help them to alleviate or prevent some of the financial difficulties they may encounter.

As we continue to work towards economic recovery and job creation, it is imperative to also educate our children so that they may understand and excel in economic and personal finance.●

A TRIBUTE TO DR. BILL BRIGHT

● Mr. NICKLES. Mr. President, in this country of unique opportunity and personal liberty, there are people who use their talents and abilities to help others. Many of these men and women go unnoticed or unappreciated in spite of their many selfless deeds.

I rise to honor a native Oklahoman who not only rose to the challenge of God's calling in his life, but was one of the greatest visionaries and faithful servants of our time.

Dr. Bill Bright, a native of Coweta, Oklahoma, experienced something that, to many of us seems surreal: he was educated in a one-room schoolhouse for over 9 years! He graduated from Oklahoma's Northeastern State University in 1944, where he was known for his keen academic rigor and ability.

Bill married his high school sweetheart, the former Vonetta Zachary, and moved to southern California to begin a successful confections company. Although he could have made a fortune with his small but promising empire, Bill knew that he was called to a higher purpose.

Bill Bright answered that call when he found Campus Crusade for Christ. Known to many for his vigorous passion for spreading the Gospel, it is not difficult to understand why he achieved such international popularity. Today, Campus Crusades for Christ has over 26,000 employees and over 225,000 volunteers spanning 191 countries. His movie, JESUS, a documentary on the life of Jesus Christ, has been viewed by 5.1 billion people, which is roughly 5/6 of the present world population.

Although these are undeniable great accomplishments, a true leader demonstrates by example. And that is Bill Bright. In 1996, Bill was presented with the prestigious Templeton Prize for Progress in Religion, for his work with fasting and prayer. Worth more than 1 million dollars, Bill gave every penny of it to organizations that helped him to win that award—those promoting spiritual benefits of fasting and prayer.

My friend Bill Bright demonstrated the qualities of a true spiritual American leader. Considering his roots and his achievements, I venture to say Dr. Bill Bright is the evangelical Horatio Alger story of the last half-century.

Those of us who have been touched by this wonderful man will certainly miss him, but one thing is for sure—Bill Bright's vision and legacy will live on. He has made a positive difference for our state and country and I am certain helped countless individuals find eternal happiness.●

IN RECOGNITION OF THE 60TH WEDDING ANNIVERSARY OF JOSEPH AND VIVIAN SAFRANEK

● Mr. KOHL. Mr. President, I rise today to congratulate Joseph and Vivian Safranek for a marriage that has lasted 60 years. It was in 1942 in the town of Iron Mountain, MI that Joseph first offered Vivian a ride home after working at the Pine Mountain ski tournament. She accepted the ride and soon after accepted his marriage proposal. On September 18, 1943 in Kingsford, MI's Our Redeemer Lutheran Church, the two celebrated their union.

After 7 years and two children, Joseph and Vivian decided to make the move to the great State of Wisconsin. The 1950s and 60s were hard times for the Safraneks. They lived in the west side of Milwaukee in a small apartment with no running water. Joseph worked as a route salesman for the Milwaukee Cheese Co. and then at the Continental Baking Co. And even

though money was tight, there was always more than enough good Wisconsin cheese and Wonder bread to go around.

Sixty years is a long time and a lot of memories. Their successful union could be measured in years or even tender moments. But even more impressive a measure is their four wonderful children and seven grandchildren.

A marriage of 60 years is an impressive and rare accomplishment. Today, I express my deepest admiration for the Safraneks—the love, the laughter, the family and the marriage that, while not born in Wisconsin, symbolizes Wisconsin and its values at their best.●

TRIBUTE TO CLYDE BROWN

● Mr. LOTT. Mr. President, it is with great pleasure that I pay tribute to an outstanding citizen of Mississippi. On June 13, 2003, Clyde Brown of Moss Point, MS was recognized for his long-term efforts to protect the fragile, natural resources of coastal Mississippi by receiving the 2003 National Oceanic and Atmospheric Administration's, NOAA, Environmental Hero Award.

Established in 1995 to commemorate the 25th anniversary of Earth Day, the Environmental Hero award honors individuals and organizations for their tireless efforts to preserve and protect our Nation's environment. Mr. Brown is among only 36 winners in the Nation of the 2003 NOAA Environmental Hero Award.

A lifelong resident of eastern Jackson County, MS, Clyde Brown recently retired after nearly 40 years of employment at the International Paper Company and is a part-time oysterman and seafood processor. He has been involved in a number of volunteer efforts that range from serving on citizen advisory councils to establishing the Mississippi Department of Marine Resources' Grand Bay National Estuarine Research Reserve, NERR.

Mr. Brown has worked with my office and other members of Congress over the years to secure support for a variety of projects including the oyster relay project, establishment of the Grand Bay NERR, expansion of the Grand Bay National Wildlife Refuge, a local Federal Emergency Management Agency buyout, disaster relief, and the Coastal Impact Assistance Program, to name a few.

David Ruple, manager of the Mississippi Department of Marine Resources/Grand Bay National Estuarine Research Reserve said, ''Clyde Brown is soft-spoken yet determined in his efforts to conserve and restore the resources of the Mississippi gulf coast. He serves as the pulse of the local community and has been the sounding board for local residents inquiring about Federal and State conservation initiatives over the years. Clyde is a true environmental hero, and I am proud to have had the opportunity to work with him.

It is citizens such as Mr. Brown whose dedicated efforts and outstanding accomplishments greatly benefit the environment and make our Nation a better place for all Americans.●

SALUTING GEORGE AND LOIS FERNAU AND FUTURES OF AMERICA

● Mr. TALENT. Mr. President, today I salute George and Lois Fernau of St. Louis, who are the founders of a very talented, very patriotic singing group, the Futures of America.

The Fernaus are parents of four children, and something Mr. Fernau saw on television in the early 70s as he was about to take his daughter to softball practice disturbed him very deeply. He watched as a group of protesters burned the American flag. Mr. Fernau thought this was a slap in the face to those who fought to defend freedom under that flag and a desecration of an enduring symbol of freedom and democracy. He was inspired to do something to express his love for the country, so he asked his daughters after softball practice if they would be willing to be part of a singing group that would tour the country and spread patriotic feeling through music. Thus, the Futures of America were born.

The mission of the Futures of America is to strongly encourage all Americans, but especially young people, to learn what they call the ''M.V.P.P's of Life'': morals, values, principles and patriotism. They sing classic American songs such as The Battle Hymn of the Republic, Put On a Happy Face, God Bless America, as well as songs written by Mr. Fernau, such as Missouri: Our Home State, St. Louis, My Kind of Town, and You're My Music. They have performed on radio and television, and have also released several albums of their music.

Since their inception in 1971, the Futures of America have kept up an ambitious and impressive schedule, traveling close to a million miles and performing over 2,500 times. They have sung for a number of dignitaries, including two Presidents, an African king, and a host of Missouri's State and local elected officials. They also sing at venues such as Air Force bases, parades, and conventions for groups such as the Knights of Columbus, the American Legion, and the Rotary Club. The Futures of America also have the distinction of having performed before all 172 VA hospitals in America, warming the hearts of many veterans.

I commend George and Lois Fernau and the Futures of America for their service to the community over the past 32 years. Their patriotism and strong moral values are a good example for everyone. I am honored to share their accomplishments with my colleagues, and I wish them all the best for the future.●

A TRIBUTE TO MAJOR GENERAL KEVIN B. KUKLOK

● Mrs. FEINSTEIN. Mr. President, I rise to pay tribute to MG Kevin B. Kuklok, who is about to retire and return to private life after more than 35 years of selfless service to our Nation as a U.S. Marine.

Major General Kuklok graduated from the University of North Dakota, with a Bachelor of Science degree in chemical engineering. He also received his master's degree in business administration from the United States International University in San Diego, CA. He enrolled in the Platoon Leaders Class program in March 1965, and was commissioned a Second Lieutenant in the Marine Corps Reserve in August 1968.

He has served with numerous operational commands in billets ranging from staff officer to Commanding General. Some of these units were Marine Medium Lift Helicopter Squadrons 267 and 367; 2d Battalion, 7th Marines; Marine Attack Helicopter Squadron 169; Marine Air Group 46; and Marine Medium Helicopter Squadron 766.

He was Commanding Officer Headquarters and Maintenance Squadron 41, Det B; Commanding Officer of Marine Medium Helicopter Squadron 764. He also served as Director of Readiness and Safety, 4th Marine Aircraft Wing, MARRESFOR, New Orleans, LA.

Upon promotion to brigadier general, he assumed command as the commanding general, Reserve Marine Ground Task Force East, Camp Lejeune, NC.

Major General Kuklok is a veteran of Operations Desert Shield and Desert Storm. He also served as the commanding general, 4th Marine Aircraft Wing, Marine Corps Reserve, from September 1997 until August 2000.

In November 2001, General Kuklok was ordered back to active duty to support Operation Enduring Freedom, at which time he assumed his current duties as Assistant Commandant, Plans, Policies and Operations, his last active duty position.

Throughout his career as a U.S. Marine, Major General Kuklok has demonstrated uncompromising character, discerning wisdom, and a sincere, profound sense of duty to his country, his Corps, and especially to his marines and their families.

On behalf of my colleagues on both sides of the aisle, I wish to recognize Major General Kuklok's accomplishments and his devoted service to the Nation. Congratulations to him, his wife, Diana, and their two children, Nicole and Bryce, on the completion of a long and distinguished career.●

IN RECOGNITION OF THE 50TH ANNIVERSARY OF BIG BROTHERS BIG SISTERS OF SAGINAW BAY AREA

● Mr. LEVIN. Mr. President, I would like to recognize a great organization from my home State of Michigan. On August 14, 2003, people will gather to celebrate the 50th anniversary of Big Brothers Big Sisters of Saginaw Bay Area, Inc. I am pleased to pay tribute

to the members of Big Brothers Big Sisters for their years of dedication and service to the community.

Big Brothers Big Sisters volunteers provide stability for area youth by mentoring children and organizing exciting activities. The tools of warmth, human interest, and personal friendship are used to improve the health, education, and personal welfare of participants. The nonsectarian, multiracial agency holds an annual Easter egg hunt, Halloween and Christmas parties, as well as a variety of community enrichment activities in the Saginaw Bay area.

In 1952, 18 individuals united to form the board of directors for Big Brothers after receiving a grant from the Optimist Club of Saginaw. With the opening of a new office in Bay City in 1973, the organization officially changed its name to Big Brothers of Saginaw Bay Area, Inc.

In 1966, the Woman's Council of Saginaw recognized the need for a Big Sisters program. The following year the Altrusa Club, a community service organization, sponsored and organized the project, and soon after, a local Big Sisters program was established. The two organizations joined forces on September 1, 1982, to form Big Brothers Big Sisters of Saginaw Bay Area, Inc., saving an estimated $15,000 to $20,000 in operating expenses annually. This money is used to enrich the lives of approximately 725 young people in Saginaw and Bay Counties.

I take great pride in recognizing the efforts of Big Brothers Big Sisters of Saginaw Bay Area as it celebrates its 50th anniversary. I have no doubt that this organization will continue to enrich the lives of local children. I know my Senate colleagues will join me in saluting the accomplishments of Big Brothers Big Sisters of Saginaw Bay Area and in wishing the group continued success in the future.●

RECOGNIZING THE ACHIEVEMENTS OF DR. BILL MADIA

● Mr. ALEXANDER. Mr. President, I wish to recognize the achievements of Dr. Bill Madia, President and CEO of UT-Battelle, and Director of Oak Ridge National Laboratory in Tennessee. Bill will be stepping down in August to take on the new position of Executive Vice President of Laboratory Operations at Battelle headquarters in Columbus, OH. Over the past three years Dr. Madia has contributed greatly to the Lab's many successes, and I would like to thank him for his leadership and commitment to our State.

ORNL is the largest of the Department of Energy's, Office of Science multi-program laboratories and to run a facility of its size is no simple task. Bill joined ORNL with more than 25 years of international experience in research and research management, including 15 years leading public and private research labs. He became the director of ORNL on April 1, 2000 and since then has continued the tradition of excellence at Oak Ridge.

Bill Madia is a visionary who delivers results. Under his leadership, construction of the Spallation Neutron Source was initiated. The SNS will produce the most intense pulsed neutron beams in the world and will be completed as expected in 2006. It is under Bill's direction that this project is progressing both on schedule and within budget.

Dr. Madia is also responsible for a major renewal of the Laboratory through his modernization plan. He has enabled the private capitalization of several new buildings that will house the Laboratory's advanced computing assets. Bill also has been instrumental in building the Laboratory's nanotechnology initiative, and the first of the DOE's Nanoscience centers, the Center for Nanophase Materials Sciences, had its groundbreaking earlier this month.

Oak Ridge has an extensive history of linking with universities and with Bill's guidance has expanded the use of these partnerships. Just recently, researchers of Oak Ridge, North Carolina State University, and University of Tennessee discovered how to tune the atomic-level zone of semi-conductor devices, the building blocks of computing chips. Additionally, he captured a leadership role in DOE's computational science initiative for Oak Ridge by building a partnership with industry to develop the next generation machine and attracting private sector financing to rapidly build a new facility necessary to operate world-class supercomputers.

Bill understands the importance of science and the role that science development plays in our lives and in the future. He has continually taken the initiative to push forth all projects that Oak Ridge takes on. Our investments in science driven technology contribute greatly to the economic growth of this country, and during his tenure the UT-Battelle team has helped with the creation of 30 new companies through the ORNL technology transfer program.

Outside of the laboratory in the Oak Ridge community, Bill Madia has done an outstanding job in promoting economic sustainability and has been a vigorous promoter of education. In fact, he has remained a strong supporter of funding for high school science laboratories and the University of Tennessee's Academy for Math and Science.

The people of Oak Ridge Tennessee and this Nation have benefited from all his hard work and will continue to benefit from Bill Madia's dedication as he continues his excellence as a member of the UT-Battelle Board of Directors. Although, he will be missed dearly in Tennessee, I am confident that he will continue to make a difference in the community. I wish him the best of luck in his future endeavors.●

MEASURES HELD OVER/UNDER RULE

The following resolution was read, and held over, under the rule.

S. Res. 207. A resolution amending the Standing Rules of the Senate to provide that it is not in order in a committee to ask questions regarding a presidential nominee's religious affiliation.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–3518. A communication from the Secretary of Agriculture, transmitting, a draft of proposed legislation entitled ''To Amend Sections 7D, 16(i)(2), and 19 of the United States Grain Standards Act to Authorize the Secretary of Agriculture to Recover Through User Fees the Costs of Standardization Activities''; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3519. A communication from the Assistant Secretary of the Navy, Installations and Environment, Department of the Navy, transmitting, a report relative to studying certain functions performed by military and civilian personnel in the Department of the Navy for possible performance by private contractors; to the Committee on Armed Services.

EC–3520. A communication from the Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Enuretic Devices, Breast Reconstructive Surgery, PFPWD Valid Authorization Period, Early Intervention Services'' (RIN0720–AA70) received on July 28, 2003; to the Committee on Armed Services.

EC–3521. A communication from the Assistant General for Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Manufactured Home Construction and Safety Standards: Smoke Alarms'' (RIN2502–AH48) received on July 28, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–3522. A communication from the Chairman, National Credit Union Administration, transmitting, pursuant to law, the Administration's 2002 Annual Report; to the Committee on Banking, Housing, and Urban Affairs.

EC–3523. A communication from the President of the Senate, transmitting, pursuant to law, the report of an Executive Order relative to sanctions against Burma; to the Committee on Banking, Housing, and Urban Affairs.

EC–3524. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Milford IA (Doc. No. 03–ACE–07)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3525. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Muscatine, IA (Doc. No. 03–ACE–39)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3526. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Pratt, KS (Doc. No. 03–ACE–36)'' (RIN2120–AA66) received on July 28, 2003; to

the Committee on Commerce, Science, and Transportation.

EC–3527. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Hays, KS (Doc. No. 03–ACE–35)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3528. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Brookfield, MO (Doc. No. 03–ACE–25'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3529. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Cambridge, NE (Doc. No. 03–ACE–50)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3530. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E5 Airspace; Tuscaloosa, AL (Doc. No. 03–ASO–07)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3531. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D, E4, E5 Airspace; Elizabeth City, NC (Doc. No. 03–ASO–06)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3532. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Rock Rapids, IA (Doc. No. 03–ACE–28)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3533. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Muscatine, IA (Doc. No. 03–ACE–39)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3534. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Falls City, NE (Doc. No. 03–ACE–49)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3535. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Sibley, IA (Doc. No. 03–ACE–48)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3536. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Red Oak, IA (Doc. No. 03–ACE–46)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3537. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Sac City, IA (Doc. No. 03–ACE–47)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3538. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Ottumwa, IA (Doc. No. 03–ACE–41)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3539. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–200 and 767–300 Series Airplanes (Doc. No. 2002–NM–187)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3540. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Initiative Industrial Italiane S.P.A. Models Sky Arrow 650 TC and 650 TCN Airplanes (Doc. No. 2003–CE–10)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3541. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Inizative Industrial Italiane S.P.A. Models Sky Arrow 650 TC and 650 TCN Airplanes (Doc. No. 2003–CE–11)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3542. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pilatus Aircraft Ltd. Models PC–6 Airplanes (Doc. No. 2003–CE–12)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3543. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce RB211 Series Turbofan Engines (Doc. No. 2003–NE–13)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3544. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Window Rock, AZ (Doc. No. 03–AWP–9)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3545. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Pocahontas, IA (Doc. No. 03–ACE–45)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3546. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Kaiser, MO (Doc. No. 03–ACE–44)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3547. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes (Doc. No. 2003–NM–02)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3548. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A321–131 Series Airplanes; Equipped with International Aero Engines (IAE) V2500–A5 Series Engines (Doc. No. 2003–NM–134)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3549. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767 Series Airplanes (Doc. No. 2002–NM–13)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3550. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF6–80A1/A3 and CF6–80C2A PMC Series Turbofan Engines (Doc. No. 2002–ANE–09)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3551. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Aeropatiale Model ATR42–200, 300, 320, and 500 Series Airplanes and Model ATR72–102, 202, 212, and 212A Series Airplanes (Doc. No. 2002–NM–331)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3552. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems Limited Model BAE 146 Series Airplanes (Doc. No. 2001–NM–271)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3553. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empressa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes (Doc. No. 99–NM–98)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3554. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney JT8D Series Turbofan Engines (Doc. No. 97–ANE–05)'' (RIN2120–AA66)

received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3555. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (103) Amendment No. 3061 (Doc. No. 30372)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3556. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (113) Amendment No. 3059 (Doc. No. 30369)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3557. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Hartzell Propeller Inc. Propellers with Aluminum Blades (Doc. No. 96–ANE–40)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3558. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of VOR Federal Airways and Jet Routes in the Vicinity of Savannah, GA (Corr. Doc. No. 02–ASO–7)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3559. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (26) Amendment No. 3062 (Doc. No. 30373)'' (RIN2120–AA66) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3560. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Office of Sustainable Fisheries, transmitting, pursuant to law, the report of a rule entitled ''Emergency Final Rule to Implement Measures to Reduce Overfishing on Species Management Under the Northeast Multispecies Fishery Management Plan'' (RIN0648–AQ72) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3561. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the report of the Commission's Strategic Plan covering the Commission's program activities through fiscal year 2008; to the Committee on Commerce, Science, and Transportation.

EC–3562. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones, Security Zones and Drawbridge Operation Regulations'' (RIN1625–AA09) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3563. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations'' (RIN1625–AA00) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3564. A communication from the Associate Assistant Administrator for Management, Ocean Services and Coastal Zone Management, National Ocean Services Coastal Services Center, transmitting, pursuant to law, the report of a rule entitled ''Federal Register Notice—Coastal Services Center Broad Area Announcement Fiscal Year 2002 Programs'' received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3565. A communication from the Acting Managing Director, Office of Managing Director, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003'' (MD Doc. No. 03–83) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3566. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more for Israel; to the Committee on Foreign Relations.

EC–3567. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $25,000,000 or more to Greece; to the Committee on Foreign Relations.

EC–3568. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of defense articles or defense services in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–3569. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to the United Arab Emirates; to the Committee on Foreign Relations.

EC–3570. A communication from the Secretary of Labor, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–3571. A communication from the Chairman, Federal Housing Finance Board, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 2002 through March 31, 2003; to the Committee on Governmental Affairs.

EC–3572. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled ''Comparative Analysis of Actual Cash Collections to Revised Revenue Estimates Through the 1st Quarter of Fiscal Year 2003''; to the Committee on Governmental Affairs.

EC–3573. A communication from the Board Members, Merit Systems Protection Board, transmitting, the Board's Annual Report for fiscal year 2001; to the Committee on Governmental Affairs.

EC–3574. A communication from the Assistant Secretary, Chief Financial Officer, Department of the Interior, transmitting, the Department's Annual Accountability Report for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC–3575. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Repeal of Dual Compensation Reductions for Military Retirees'' (RIN3206–AI91) received on July 28, 2003; to the Committee on Governmental Affairs.

EC–3576. A communication from the Chairman, National Science Board, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–3577. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled ''Sufficiency Review of the Water and Sewer Authority's Fiscal Year 2002 Revenue Estimate in Support of $100,000,000 in Commercial Paper Notes''; to the Committee on Governmental Affairs.

EC–3578. A communication from the Senior Vice President, Chief Financial Officer, Potomac Electric Power Company, transmitting, pursuant to law, the Company's Balance Sheet as of December 31, 2002; to the Committee on Governmental Affairs.

EC–3579. A communication from the Executive Director, Interstate Commission on the Potomac River Basin, transmitting, pursuant to law, the Commission's Financial Statement for the period of October 1, 2000 through September 30, 2001; to the Committee on Governmental Affairs.

EC–3580. A communication from the Inspector General, Railroad Retirement Board, transmitting, the Board's Semiannual Report for the period October 1, 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–3581. A communication from the Archivist of the United States, transmitting, the Fiscal Year 2001 Annual Performance Report for the National Archives and Records; to the Committee on Governmental Affairs.

EC–3582. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Prevailing Rate Systems; Change in the Survey Cycle for the Pennington, SD, Nonappropriated Fund Wage Area'' (RIN3206–AJ30) received on July 28, 2003; to the Committee on Governmental Affairs.

EC–3583. A communication from the General Counsel, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a nomination confirmed for the position of Director, Office of Management and Budget, received on July 23, 2003; to the Committee on Governmental Affairs.

EC–3584. A communication from the General Counsel, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a nomination for the position of Deputy Director, Office of Management and Budget, received on July 23, 2003; to the Committee on Governmental Affairs.

EC–3585. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Food Labeling: Health Claims; D-tagatose and Dental Caries'' (Doc. No. 02P–0177) received on July 28, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–3586. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Ophthalmic Drug Products for Over-the-Counter Human Use ; Final Monograph; Technical Amendment'' (RIN0910–AA01) received on July 28, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–3587. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human

Services, transmitting, pursuant to law, the report of a rule entitled ''Beverages: Bottled Water; Confirmation of Effective Date'' (Doc. No. 03N–0068) received on July 28, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–3588. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Regulations, and Administrative Procedures; Delay of Effective Date'' (RIN0905–AC81) received on July 28, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–3589. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Records and Reports Concerning Experience With Approved New Animal Drugs'' (RIN0910–AA02) received on July 28, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–3590. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Topical Nitrofurans; Extralabel Animal Drug Use; Order of Prohibition'' (Doc. No. 01N–0499) received on July 28, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–3591. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Department's annual report relative to the Comprehensive Community Mental Health Services for Children and Their Families Program; to the Committee on Health, Education, Labor, and Pensions.

EC–3592. A communication from the Secretary of Health and Human Services, transmitting, a report relative to the Community Food and Nutrition Program; to the Committee on Health, Education, Labor, and Pensions.

EC–3593. A communication from the Assistant Secretary, Indian Affairs, transmitting, pursuant to law, the report of a rule entitled ''Law and Order on Indian Reservations'' received on July 28, 2003; to the Committee on Indian Affairs.

EC–3594. A communication from the Acting Director, Office of Regulatory Law, Board of Veterans' Appeals, transmitting, pursuant to law, the report of a rule entitled ''Board of Veterans' Appeals Rules of Practice: Claim for Death Benefits by Survivor'' (RIN2900–AL11) received on July 28, 2003; to the Committee on Veterans' Affairs.

EC–3595. A communication from the President of the United States, transmitting, pursuant to law, the six month periodic report on the national emergency with respect to Sierra Leone and Liberia that was declared in Executive Order 13194 of January 18, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–3596. A communication from the President of the United States, transmitting, pursuant to law, the report of the continuation of the national emergency with respect to Iraq that was declared in Executive Order 12722 of August 2, 1990; to the Committee on Banking, Housing, and Urban Affairs.

EC–3597. A communication from the President of the United States, transmitting, pursuant to law, a report regarding a World Trade Organization Concerning Kimberley Process Certification Scheme for Rough Diamonds; to the Committee on Finance.

EC–3598. A communication from the President of the United States, transmitting, pursuant to law, a report concerning the implementation of the Diamond Trade Act; to the Committee on Finance.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–247. A resolution adopted by the Senate of the General Assembly of the State of Pennsylvania relative to prison inmates; to the Committee on Finance.

SENATE RESOLUTION

Whereas, studies have shown that approximately 80% of prison inmates are affected by mental health/mental retardation and drug and alcohol problems; and

Whereas, studies have confirmed that 33% of all criminal justice costs are related to substance abuse; and

Whereas, data indicates that 40% of State prisoners will be released in the next 12 months and studies demonstrate that approximately 50% to 60% of inmates released from prison will reengage in criminal activity; and

Whereas, in 1999 approximately 3,773,600 American adults were on probation and nearly 713,000 were on parole with minimal substance abuse treatment; and

Whereas, research has proven that rehabilitation programs sharply reduce rates of recidivism, thereby ending a vicious and socially destructive cycle of entry and exit from prison; and

Whereas, by providing funds to establish drug and alcohol rehabilitation programs in State and county prisons, the State will be able to reduce the judicial and operational costs associated with repeat offenders and recidivism; and

Whereas, current law prohibits the use of Federal Medicaid funds for drug and alcohol rehabilitation programs in prisons under 42 CFR §435.1009 (relating to definitions relating to institutional status); and

Whereas, current law also prohibits the use of federal Medicaid funds for mental health and mental retardation treatment programs in prisons under 42 CFR §435.1009 (relating to definitions relating to institutional status); and

Whereas, treatment should lead to a decrease in recidivism among prisoners afflicted with mental health and mental retardation problems: Therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize the President and Congress of the United States to amend 42 CFR §435.1009 to permit the use of Federal Medicaid funds for prison mental health and mental retardation treatment programs and drug and alcohol rehabilitation programs and thereby afford states throughout the nation the ability to reduce recidivism and lower crime through Prison-administered treatment and rehabilitation programs; and be it further

Resolved, That copies of this resolution be transmitted to the President, the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–248. A resolution adopted by Commission of Wayne County of the State of Michigan relative to tariff rate quotas for dry milk protein; to the Committee on Finance.

RESOLUTION NO. 2003–283

Whereas, the domestic dairy industry has been significantly impacted in recent years by the rising use of dry mild protein concentrates (MPCs) and is very concerned about the effect that imported MPCs are having; the increasing use of these key components in many dairy products and the fact that regulations have clearly lagged behind technology are serious threats to a key part of American agriculture; and

Whereas, the technology that makes possible the ultrafiltration process that separates proteins and the other components of milk was not fully developed when the General Agreement on Tariffs and Trade (GATT) was finalized in 1994; as a result, there are almost no restrictions on the importation of MPCs and this is causing serious damage to the domestic dairy industry; and

Whereas, the quotas set under GATT in 1994 are clearly not comprehensive enough for the forms in which some dairy products are imported today; foreign exporters are known to blend dairy proteins for the purpose of circumventing existing tariff rate quotas; and

Whereas, further, farm groups strongly believe the dairy protein blends are being incorrectly classified by the United States Customs Service and this improper classification has also created a trade loophole that encourages importers to circumvent tariffs on certain dairy products which undermine food safety standards and cause an economic hardship for American agriculture; and

Whereas, Congress has introduced legislation to establish tariff rate quotas for MPCs and with the enactment of legislation to close this loophole American agriculture will be able to compete on a more equal basis; the overall benefits, to our national economy and the domestic dairy industry, will strengthen a vitally important industry and restore the stability of the marketplace: Now, therefore, be it

Resolved, That the Wayne County Commission on this 5th day of June, 2003 importunes the Congress of the United States to enact legislation to provide for tariff rate quotas for dry milk protein concentrates that are equivalent to the import quotas currently in place on other dairy products; and be it further

Resolved, That the Wayne County Commission urge the United States Customs Service to work for greater enforcement of food safety standards by reconsidering the classification of dairy products, especially those containing milk protein concentrates; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representative, the United States Customs Service, the United States Food and Drug Administration and the members of the Michigan Congressional Delegation.

POM–249. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to the Federal Medicare prescription drug benefit plan; to the Committee on Finance.

HOUSE RESOLUTION NO. 317

Whereas, the Commonwealth of Pennsylvania has been providing pharmaceutical assistance coverage for low-income senior citizens for almost 20 years; and

Whereas, State Lottery Fund revenues and tobacco funds support the Pharmaceutical Assistance Contract for the Elderly (PACE) and the Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier (PACENET) programs; and

Whereas, these programs have saved and will continue to save millions of dollars in costs as a result of hospitalization and nursing care facility institutionalization for many individuals being prevented or delayed because enrollees have been kept healthy with their needed prescription medications; and

Whereas, the Federal Government and pharmaceutical companies have recognized

the potential value of providing pharmaceutical assistance coverage to low-income seniors; and * * *

POM–250. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to the Veterans Health Care Funding Guarantee Act of 2003; to the Committee on Finance.

HOUSE RESOLUTION NO. 312

Whereas, funding for Department of Veterans Affairs (VA) health care under the Federal budget is discretionary and it is within the discretion of the Congress of the United States to determine how much money is allocated each year for veterans' medical care; and

Whereas, Section 1710(a) of Title 38 of the United States Code provides that the Secretary of Veterans Affairs ''shall'' furnish hospital care and medical services, but only to the extent Congress has provided money to cover the costs of the care; and

Whereas, the Disabled American Veterans (DAV) firmly believes that service-connected disabled veterans have earned the right to VA medical care through their extraordinary sacrifices and services to this nation; and

Whereas, the American Legion, AMVETS, Disabled American Veterans, Veterans of Foreign Wars, Paralyzed Veterans and other service organizations have fought for sufficient funding for VA health care and a budget that reflects the rising cost of health care and the increasing need for medical services; and

Whereas, the VA is unable to provide timely access to quality health care to many of our nation's most severely disabled service-connected veterans; and

Whereas, making veterans health care funding mandatory would ensure that the Federal Government meets its obligation to provide health care to service-connected disabled veterans and that all veterans eligible for the VA health care system have access to timely, quality health care; and

Whereas, making veterans health care funding mandatory would eliminate the year-to-year uncertainty about funding levels which has prevented the VA from being able to adequately plan for and meet the growing needs of veterans seeking treatment; and

Whereas, including all veterans for care in the mandatory health care funding proposal protects the overall viability of the system and the specialized programs to the VA has developed to improve the health and well-being of our nation's service-connected disabled veterans: Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge Congress to take all the necessary steps to enact into law the Veterans Health Care Funding Guarantee Act of 2003, and make veterans health care mandatory to ensure that veterans have access to timely, quality health care; and be it further

Resolved, that copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–251. A joint resolution adopted by the Legislature of the State of Maine relative to the Federal Clean Air Act; to the Committee on Environment and Public Works.

JOINT RESOLUTION

We, your Memorialists, the Members of the One Hundred and Twentieth Legislature of the State of Maine now assembled in the Second Regular Session, most respectfully present and petition the President of the United States and Congress, as follows:

Whereas, Section 111 of the Federal Clean Air Act requires the adoption of Federal standards, known as new source review, reflecting the best available control technology for facilities that cause or contribute significantly to air pollution that may endanger public health and welfare; and

Whereas, the United States Environmental Protection Agency adopted such standards of performance for the construction or modification of power plants; and

Whereas, litigation against power plant owners for violations of new source review is being actively pursued; and

Whereas, the current Federal administration is reportedly considering modifications of the new source review program; and

Whereas, acid rain, which is damaging sensitive ecosystems, has been attributed to emissions from coal-burning plants in the Midwest and the Mid-Atlantic states and, to a lesser extend, in New England; and

Whereas, scientific research has established a well-defined link between power plant air emissions and human health effects, including exacerbation of symptoms for those with asthma, increased risk of heart attacks for those with heart disease and increased risk of lung cancer and premature death: Now, therefore, be it

Resolved, That We, your Memorialists, urge President George W. Bush and the United States Environmental Protection Agency Administrator Christie Whitman to maintain the existing regulations on new source review; and be it further

Resolved, That We, your Memorialists, urge Congress to take appropriate action against any decision made by the United States Environmental Protection Agency to modify the regulations implementing Section 111 of the Federal Clean Air Act if the result would be to jeopardize Maine's ability to safeguard public health and protect environmental quality; and be it further

Resolved, That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, Administrator Christie Whitman and each member of the Maine Congressional Delegation.

POM–252. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to biological invasions by nonnative species; to the Committee on Environment and Public Works.

SENATE RESOLUTION

Whereas, biological invasions by nonnative species are a national problem, pose significant threats to Pennsylvania's ecosystems and economy, severely impact vital Commonwealth interest, including agriculture, forestry, recreation and tourism, and may be detrimental to public health and safety; and

Whereas, discharge of ballast water from ships is a primary vector for introduction of nonnative species into Commonwealth habitats; and

Whereas, Pennsylvania's watershed basins for the Great Lakes, the Delaware, Susquehanna, Ohio and Potomac rivers and other pathways of commerce and recreation have a major role in introducing nonnative species; and

Whereas, Pennsylvania's natural resources provide exceptional quality of life and economic prosperity to the citizens of this Commonwealth; and

Whereas, Great Lakes and Chesapeake Bay intergovernmental task forces have recommended actions to prevent and control biological invasions; and

Whereas, Section 27 of Article I of the Constitution of Pennsylvania establishes the Commonwealth as trustee of Pennsylvania's public natural resources: Therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize the Congress of the United states to enact legislation that would coordinate Federal and regional actions to prevent and control biological pollution, particularly through management of ballast water discharges, elimination of unintentional introductions of nonnative invasive species and reduction of the dispersal of nonnative species within Pennsylvania's ecosystems through the development of timely, effective, scientifically based, environmentally sound and economically viable management programs; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–253. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to increased security measures for the United States Postal Service; to the Committee on Governmental Affairs.

HOUSE RESOLUTION NO. 318

Whereas, identification fraud is becoming one of the fastest-growing crimes in the United States; and

Whereas, identification fraud will cost financial companies $4.2 billion this year and $8 billion by 2006 according to the market research firm Financial Insights; and

Whereas, more than 750,000 Americans were affected by identification fraud in 2001; and

Whereas, identification fraud increased by 23% from 2000 to 2001; and

Whereas, identification fraud through the use of change of address forms is a common trend in crimes of identification fraud; and

Whereas, identification fraud security measures taken by the United States Postal Service would significantly decrease the * * *

POM—254. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to the Carl L. Perkins Vocational and Technical Education Act; to the Committee on Health, Education, Labor, and Pensions.

Whereas, the Carl D. Perkins Vocational and Technical Education Act is scheduled for reauthorization this year; and

Whereas, in fiscal year 2002, the Commonwealth of Pennsylvania received nearly $52 million for its allocation under the Perkins Act; and

Whereas, Perkins Act moneys were used to provide Pennsylvania career and technical education students, including those with special needs, with high-quality career and technical education programs at the secondary, adult and postsecondary levels; and

Whereas, under the current Perkins Act, Pennsylvania students * * *

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Governmental Affairs, without amendment:

S. 589. A bill to strengthen and improve the management of national security, encourage Government service in areas of critical national security, and to assist government agencies in addressing deficiencies in personnel possessing specialized skills important to national security and incorporating the goals and strategies for recruitment and retention for such skilled personnel into the strategic and performance management systems of Federal agencies (Rept. No. 108-119).

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, with amendments and an amendment to the title:

S. 1244. A bill to authorize appropriations for the Federal Maritime Commission for fiscal years 2004 and 2005 (Rept. No. 108-120).

By Mr. COCHRAN, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 1904. A bill to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes (Rept. No. 108-121).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1053. A bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment (Rept. No. 108-122).

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany S. 274, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes (Rept. No. 108-123).

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble:

S. Res. 30. A resolution expressing the sense of the Senate that the President should designate the week beginning September 14, 2003, as ''National Historically Black Colleges and Universities Week''.

S. Res. 204. A resolution designating the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title:

S. 1177. A bill to ensure the collection of all cigarette taxes, and for other purposes.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute and with a preamble:

S. Con. Res. 25. A concurrent resolution recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month'', and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GRASSLEY for the Committee on Finance.

*Josette Sheeran Shiner, of Virginia, to be a Deputy United States Trade Representative, with the rank of Ambassador.

*James J. Jochum, of Virginia, to be an Assistant Secretary of Commerce.

*Robert Stanley Nichols, of Washington, to be an Assistant Secretary of the Treasury.

By Mr. HATCH for the Committee on the Judiciary.

Sandra J. Feuerstein, of New York, to be United States District Judge for the Eastern District of New York.

Richard J. Holwell, of New York, to be United States District Judge for the Southern District of New York.

Steven M. Colloton, of Iowa, to be United States Circuit Judge for the Eighth Circuit.

Stephen C. Robinson, of New York, to be United States District Judge for the Southern District of New York.

P. Kevin Castel, of New York, to be United States District Judge for the Southern District of New York.

R. David Proctor, of Alabama, to be United States District Judge for the Northern District of Alabama.

Rene Acosta, of Virginia, to be an Assistant Attorney General.

Daniel J. Bryant, of Virginia, to be an Assistant Attorney General.

Paul Michael Warner, of Utah, to be United States Attorney for the District of Utah for the term of four years.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

NOMINATIONS DISCHARGED

On request by Mr. SUNUNU and by unanimous consent, it was

Ordered, That the following nominations be discharged from the Committee on Foreign Relations:

DEPARTMENT OF STATE

Donald K. Steinberg, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Nigeria.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Nominee: Donald Kenneth Steinberg.

Post: Nigeria.

Contributions:

1. Self, Donald Kenneth Steinberg, none.

2. Spouse, Raquel Willerman, none.

3. Children/spouses, none.

Parents, Beatrice Blass Steinberg, none. Warren Linnington Steinberg, as below.

Donee, date, amount:

DSCC, 1/24/99, $20; Kennedy for Senate, 1/24/99, $15; California Democratic Committee, 1/24/99, $20; Hillary Clinton for Senate, 2/27/99, $20; California Democratic Committee, 6/3//99, $10; DCCC, 6/27/99, $15; DSCC, 7/1/99, $15; DNC, 7/17/99, $15; DCCC, 1/19/99, $20; Natl Committee for an Effective Congress, 7,27/99, $20; DNC, 8/1/99, $10; Democrats 2000, 8/1//99, $10; Feinstein for Senate, 9/19/99, $15; DNC, 12/12/99, $20; DCCC, 12/31/99, $15; DSCC, 12/31/99, $15; Kennedy for Senate, 12/31/99, $15; Carnahan for Senate, 12/31/99, $15; Kennedy for Senate, 2/14/00, $10; McCarthy for Congress, 2/26/00, $10; Schiff for Congress, 4/17/00, $15; Natl Committee for an Effective Congress, 5/15/00, $25; DSCC, 5/18/00, $20; Democrats 2000, 5/19/00, $15; Feinstein for Senate, 5/24/00, $10; Democrats 2000, 5/29/00, $10; DCCC, 6/10/00, $20; Democrats 2000, 6/16/00, $15; DCCC, 8/21/00, $10; Schiff for Congress, 8/21/00, $15; DNC, 8/21/00, $10; Feinstein for Senate, 8/24/00, $10; DNC, 8/27/00, $20; DSCC, 8/29/00, $20; Natl Committee for an Effective Congress, 8/29/00, $20; DNC, 9/8/00, $15; DNC, 9/16/00, $10; Gephardt for Congress, 9/16/00, $15; Schiff for Congress, 10/6/00, $10; DNC, 10/6/00, $10; DCCC, 10/6/00, $10; Carnahan for Senate, 10/6/00, $10; Kerry for Senate, 10/7/00, $10; Schiff for Congress, 10/21/00, $10; Democrats 2000, 10/21/00, $15; Carnahan for Senate, 12/31/00, $15; California Democratic Victory Fund, 12/31/00, $15; Natl Committee for an Effective Congress, 2/20/01, $15; Democratic Majority, 2/20/01, $15; DNC, 2/27/01, $15; DCCC, 2/28/01, $15; Democrat 2000, 2/28/01, $15; Wellstone for Senate, 5/14/01, $10; Carnahan for Senate, 5/27/01, $10; 21st Century Democrats, 6/10/01, $15; DSCC, 7/7/01, $20; Kerry for Senate, 7/7/01, $15; DNC, 8/16/01, $15; Natl Committee for an Effective Congress, 9/9/01, $15; Wellstone for Senate, 9/9/01, $15; DSCC, 9/9/01, $15; Kerry for Senate, 9/9/01, $15; DSCC, 10/26/01, $15; DNC, 10/26/01, $15; Democratic Victory Fund, 10/26/01, $15; Feingold for Senate, 11/28/01, $10; Gephardt for Congress, 11/28/01, $10; Wellstone for Senate, 12/12/01, $15; Kerry for Senate, 12/13/01, $15; DSCC, 1/15/02, $15; DNC, 3/10/02, $20; Kerry for Senate, 3/18/02, $10; Barbara Boxer, 4/18/02, $15; Gephardt for Congress, 9/1/02, $15; DNC, 9/8/02, $20; DSCC, 9/8/02, $20; Feingold for Senate, 9/8/02, $15; 21st Century Democrats, 9/8/02, $15; DCCC, 9/8/02, $20; Natl Committee for an Effective Congress, 10/8/02, $15.

5. Grandparents, all deceased.

6. Brothers and spouses, James Robert Steinberg, none; Leigh William Steinberg, as below.

Donee, date, amount:

Democratic Foundation of Orange County, 2/5/99, $1,000; Bill Bradley for President Inc., 9/30/99, $1,000; California Victory 2000, 12/14/99, $10,000; includes DSCC, 12/14/99, $8,000; Feinstein 2000, 12/14/99, $1,000; Feinstein 2000, 12/14/99, $1,000; Committee to Re-Elect Loretta Sanchez, 2/16/00, $500; Erin Gruwell for Congress, 3/1/00, $1,000; Schiff for Congress, 3/2/00 $1,000; Committee to Re-Elect Loretta Sanchez, 5/22/00, $1,000; Schiff for Congress, 5/31/00, $1,000; DNC—Non-Federal Individual, 7/11/00, $10,000; DNC—Non-Federal Individual, 7/11/00, $15,000; DNC—Non-Federal Individual, 8/17,00, $22,500; DNC—Services Corporation, 8/17/00, $10,000; DNC—Services Corporation, 8/25/00, $1,000; California Victory 2000, 9/25/00, $5,000; Democratic Foundation of Orange County, 5/7/01, $1,000; Committee to Re-Elect Loretta Sanchez, 6/18/01, $1,000; Committee to Re-Elect Loretta Sanchez, 12/4/01, $1,000; Friends of Barbara Boxer, 7/2/02, $2,000; Senate Victory committee, 9/17/02, $10,000; Includes DSCC, 9/17/02, $9,000; Citizens for Harkin, 9/17/02, $1,000.

6. Brothers and spouses, Lucy Steinberg, sister-in-law.

Donee, date, amount:

DNC—Services Corporation, 8/17/00, $10,000.

6. Brothers and spouses (cont.), Lucy Steinberg, sister-in-law, as below.

Donee, date, amount:

DNC—Non Federal Individual, 8/17/00, $22,500; DNC Services Corporation, 8/17/00, $10,000; California Victory 2000, 12/5/00, $5,000; DSCC, 12/5/00, $5,000; Committee to Re-Elect Loretta Sanchez, 8/02/01, $1,000.

7. Sisters and spouses, none.

Constance Albanese Morella, of Maryland, to be Representative of the United States of America to the Organization for Economic Cooperation and Development, with the rank of Ambassador.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in the report is complete and accurate.

Nominee: Constance A. Morella.

Post: U.S. Ambassador and Permanent Representative to the organization for Economic Cooperation and Development (OECD).

Contributions, amount, date, donee:

1. Self, Constance A. Morella, None.

2. Spouse, Anthony C. Morella $500, 8/23/02, Friends of Connie Morella; $500, 4/22/03, Gilchrist for Congress.

3. Children and Spouses: Paul and Mary Morella, none; Mark and Teresa Morella, none; Laura Morella, none; Jay Olson (spouse), $60, 10/10/02, friends of Connie Morella; Christine and David Titcomb, none; Catherine and Jeff Sanborn, none; Louise and Peter Lundin, none; Rachel and Gregg Swanson, none; Ursula and Ryen Munro, none; Paul and Hilary Sasso, none.

4. Parents, deceased.

5. Grandparents, deceased.

6. Brothers: Austin Albanese, $50, 10/12/02; $200, 6/19/02; $150, 6/03/02; $250, 4/15/02; $400, 4/17/01; $100, 10/17/00; $100, 6/14/00; $50, 5/18/00; $300, 11/10/99; $200, 8/25/98; $50, 5/22/98; Friends of Connie Morella.

John Albanese, $200, 10/23/02; $250, 5/23/02; $250, 4/26/01; $100, 10/23/00; $100, 6/01/00; $100, 11/05/99; Friends of Connie Morella.

George H. Walker, of Missouri, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Hungary.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Nominee: George Herbert Walker, III.

Post: Ambassador to Hungary.

Contributions—amount, date, donee:

1. Self, $1,000, 5–Mar–99, Governor George W. Bush, Presidential Exploratory Committee, Inc; ($1,000), 26–Apr–99, (Contribution Refund-Bush Presidential Exploratory Committee; $1,000, 25–Mar–99, Hulshof for Congress; $250,00, 29–Apr–99, Governor George W. Bush; Presidential Exploratory Committee, Inc.; $500.00, 3–May–99, Ashcroft 2000; $500.00, 28–May–99, Ashcroft 2000; $1,000.00, 28–Jun–99, McNary for Congress; $250.00, 3–Dec–99, Friends of Roy Blunt; $250.00, 6–Mar–00, Friends of Roy Blunt; $250.00, 24–Mar–00, Federer for Congress; $250.00, 27–Jun–00, Hulshoff for Congress; $250.00, 9–Aug–00, Lazio 2000; $1,000.00, 18–Sep–00, Victory 2000 Republican Party; $250.00, 21–Sep–00, Todd Aiken for Congress; $1,000.00, 5–Dec–00, Bush/Cheney Presidential Transition Foundation, Inc.; $475.00, 8–Jan–01, Presidential Inaugural Committee; $1,000.00, 4–May–01, Missouri Republican State Committee—Federal; $200.00, 30–Jul–01 Missouri Republican State Committee—Federal; $100.00, 11–Jun–01, Todd Akin for Congress; $500.00, 28–Sep–01, Friends of Roy Blunt, $1,000.00, 15–Nov–01, Talent for Senate; $100.00, 4–Jan–02, Todd Aiken for Congress; $250.00, 24–Jul–02, Lyndsey Graham for U.S. Senate; $250.00, 11–Oct–02, Talent Victory Committee; $1,000.00, 5–Apr–02, Hulshoff for Congress (Commerce Ck Bk); $250.00, 5–Oct–02, Roy Blunt for Congress (Commerce Ck Bk).

2. Spouse, Carol B. Walker, none.

3. Children and spouses:

Mary Elizabeth Walker Bunzel, $1,000, 24-Mar-99, Governor W. Bush; $1,000, 4-Mar-00, Friends of Giuliani.

Jeff Bunzel (Spouse), $1,000, 24-Mar-99, Governor George W. Bush; $1,000, 29-Oct-99, George W. Bush Presidential; $7,500, 20-Dec-99, Victory 99; $1,000, 15-Nov-99, Friends of Giuliani; $2,000, 3-Dec-01, Republican Party; $1,500, 5-Jan-01, Presidential Inaugural; $1,000, 22-Jul-02, CSFB Government Action Fund.

Wendy Walker Cleary (daughter), Robert Cleary (spouse), none.

Isabelle Walker Klein (daughter) and Dennis (spouse), $50.00, 16-Oct-02, Wellstone for Senate; $50.00, 2-Nov-02, Chellie Pingree for Senate; $100.00, Nov-02, Walter Mondale for Senate.

George Herbert Walker IV (son), $5,000, 15-Nov-00, Bush-Cheney Recount Fund; $1,000, 18-Oct-02, Chambliss for US Senate—Saxby Chambliss; $1,000, 18-Oct-02, Team Sununu—John Sununu; $2,000, 13-Dec-02, Senator Arlen Specter.

Carter Walker Saeteran (daughter), none.

4. Parents, deceased.

5. Grandparents, deceased.

6. Brothers and spouses: Ray Carter Walker (brother) and Jean (spouse), $1,000, 11-Apr-99, Bill Bradley for President; $100,00, 4-Jul-02, Bernie Sanders for Congress.

7. Sisters and Spouses: Elizabeth Walker Holden (widowed sister), none.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BUNNING (for himself, Mr. BREAUX, and Mr. BOND):

S. 1506. A bill to amend the Internal Revenue Code of 1986 to allow distilled spirits wholesalers a credit against income tax for their cost of carrying Federal excise taxes prior to the sale of the product bearing the tax; to the Committee on Finance.

By Mr. FEINGOLD (for himself, Mr. BINGAMAN, Mr. KENNEDY, Ms. CANTWELL, Mr. DURBIN, Mr. WYDEN, Mr. CORZINE, Mr. AKAKA, and Mr. JEFFORDS):

S. 1507. A bill to protect privacy by limiting the access of the government to library, bookseller, and other personal records for foreign intelligence and counterintelligence purposes; to the Committee on the Judiciary.

By Mr. HAGEL (for himself, Mr. SUNUNU, and Mrs. DOLE):

S. 1508. A bill to address regulation of secondary mortgage market enterprises, and for other purposes, to the Committee on Banking, Housing, and Urban Affairs.

By Mr. COLEMAN:

S. 1509. A bill to amend title 38, United States Code, to provide a gratuity to veterans, their spouses, and children who contract HIV or AIDS as a result of a blood transfusion relating to a service-connected disability, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. LEAHY (for himself, Mr. JEFFORDS, Mr. FEINGOLD, Mr. KENNEDY, Mr. KERRY, and Mr. DAYTON):

S. 1510. A bill to amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. KYL (for himself and Mr. MCCAIN):

S. 1511. A bill to designate the Department of Veterans Affairs Medical Center in Prescott, Arizona, as the ''Bob Stump Department of Veterans Affairs Medical Center''; to the Committee on Veterans' Affairs.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 1512. A bill to amend the Internal Revenue Code of 1986 to exclude from income and employment taxes and wage withholding property tax rebates and other benefits provided to volunteer firefighters and emergency medical responders; to the Committee on Finance.

By Mr. SCHUMER:

S. 1513. A bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form or become members of labor organizations, and for other purposes; to the Committee on Health, Education, labor, and Pensions.

By Mrs. HUTCHISON:

S. 1514. A bill to amend the Internal Revenue Code of 1985 to reform certain excise taxes applicable to private foundations, and for other purposes; to the Committee on Finance.

By Mr. GREGG:

S. 1515. A bill to establish and strengthen postsecondary programs and courses in the subjects of traditional American history, free institutions, and Western civilization, available to students preparing to teach these subjects, and to other students; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DOMENICI (for himself and Mr. CAMPBELL):

S. 1516. A bill to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the commissioner of Reclamation, to carry out an assessment and demonstration program to assess potential increases in water availability for Bureau of Reclamation projects and other uses through control of salt cedar and Russian olive; to the Committee on Energy and Natural Resources.

By Mr. BINGAMAN (for himself and Mr. GRAHAM of Florida):

S. 1517. A bill to revoke and Executive Order relating to procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records; to the Committee on Governmental Affairs.

By Mr. ENZI:

S. 1518. A bill to restore reliability to the medical justice system by fostering alternatives to current medical tort litigation, and for other purposes; to the Committee on Health, Education, Labor and Pensions.

By Mr. BINGAMAN (for himself, Ms. LANDRIEU, Mrs. LINCOLN, Mr. KERRY, Mrs. CLINTON, Mrs. MURRAY, Mr. LAUTENBERG, and Ms. MIKULSKI):

S. 1519. A bill to amend title XIX of the Social Security Act to extend medicare cost-sharing for qualifying individuals through 2004; to the Committee on Finance.

By Mr. GRAHAM of Florida (for himself, Mrs. FEINSTEIN, and Mr. ROCKEFELLER):

S. 1520. A bill to amend the National Security Act of 1947 to reorganize and improve the leadership of the intelligence community of the United States, to provide for the enhancement of the counterterrorism activities of the United States Government, and for other purposes; to the Select Committee on Intelligence.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1521. A bill to direct the Secretary of the Interior to convey certain land to the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada, for the construction of a post building and memorial park for use by the American Legion, other veterans' groups, and the local community; to the Committee on Energy and Natural Resources.

By Mr. VOINOVICH (for himself and Ms. COLLINS):

S. 1522. A bill to provide new human capital flexibility with respect to the GAO, and for other purposes; to the Committee on Governmental Affairs.

By Mr. SMITH (for himself, Mr. JEFFORDS, and Mr. CONRAD):

S. 1523. A bill to amend part A of title IV of the Social Security Act to allow a State to treat an individual with a disability, including a substance abuse problem, who is participating in rehabilitation services and who is increasing participation in core work activities as being engaged in work for purposes of the temporary assistance for needy families program, and to allow a State to count as a work activity under that program care provided to a child with a physical or mental impairment or an adult dependent for care with a physical or mental impairment; to the Committee on Finance.

By Mr. SANTORUM (for himself, Mr. ALLEN, Mr. BUNNING, Mrs. DOLE, and Mr. KYL):

S. 1524. A bill to amend the Internal Revenue Code of 1986 to allow a 7-year applicable recovery period for depreciation of motorsports entertainment complexes, to the Committee on Finance.

By Mr. KENNEDY:

S. 1525. A bill to require the Federal Communications Commission to report to Congress regarding the ownership and control of broadcast stations used to serve language minorities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1526. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of Indian tribal governments as State governments for purposes of issuing tax-exempt governmental bonds, and for other purposes; to the Committee on Finance.

By Mr. SANTORUM (for himself, Mr. DODD, Mr. CHAFEE, Ms. COLLINS, Mr. KERRY, Mr. SCHUMER, Mr. REED, and Mr. LIEBERMAN):

S. 1527. A bill to establish a Tick-Borne Disorders Advisory Committee, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1528. A bill to establish a procedure to authorize the integration and coordination of Federal funding dedicated to the community, business, and economic development of Native American communities, to the Committee on Indian Affairs.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1529. A bill to amend the Indian Gaming Regulatory Act to include provisions relating to the payment and administration of gaming fees, and for other purposes; to the Committee on Indian Affairs.

By Mr. DASCHLE:

S. 1530. A bill to provide compensation of the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River, to the Committee on Indian Affairs.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. WARNER, Mr. BINGAMAN, Mr. ALLEN, Mr. NELSON of Nebraska, Mr. COCHRAN, Mr. LAUTENBERG, Mr. BOND, Mr. HARKIN, Mr. DOMENICI, Mr. JEFFORDS, Mr. CHAMBLISS, Mr. ROCKEFELLER, Mrs. DOLE, and Mr. BREAUX):

S. 1531. A bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. STABENOW (for herself, Mr. ENZI, Mr. JOHNSON, Mr. HAGEL, Mr. SCHUMER, Mr. BAYH, Mr. CARPER, and Mr. CORZINE):

S. 1532. A bill to establish the Financial Literacy Commission, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. CANTWELL (for herself and Mr. ENZI):

S. 1533. A bill to prevent the crime of identify theft, mitigate the harm of individuals throughout the Nation who have been victimized by identify theft, and for other purposes; to the Committee on the Judicary.

By Mr. REID:

S. 1534. A bill to limit the closing and consolidation of certain post offices in rural communities, and for other purposes; to the Committee on Governmental Affairs.

By Mr. LEVIN (for himself and Ms. COLLINS):

S. 1535. A bill to amend title 23, United States Code, to establish programs to facilitate international and interstate trade; to the Committee on Environment and Public Works.

By Mr. EDWARDS (for himself and Mr. JEFFORDS):

S. 1536. A bill to provide for compassionate payments with regard to individuals who contracted human immunodeficiency virus due to the provision of a contaminated blood transfusion, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. LINCOLN:

S. 1537. A bill to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HARKIN (for himself and Mr. HATCH):

S. 1538. A bill to ensure that the goals of the Dietary Supplement Health and Education Act of 1994 are met by authorizing appropriations to fully enforce and implement such Act and the amendments made by such Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. REED (for himself, Mr. VOINOVICH, Mr. SARBANES, Ms. SNOWE, Mr. JEFFORDS, Mr. LEVIN, and Mr. HARKIN):

S. 1539. A bill to amend the Federal Water Pollution Control Act to establish a National Clean and Sage Water Fund and to authorize the Administrator of the Environmental Protection Agency to use amounts in the Fund to carry out projects to promote the recovery of waters of the United States from damage resulting from violations of that Act and the Safe Drinking Water Act, and for other purposes; in the Committee on Environment and Public Works.

By Mr. DASCHLE:

S. 1540. A bill to provide for the payment of amounts owed to Indian tribes and individual Indian money account holders; to the Committee on Indian Affairs.

By Mr. EDWARDS:

S. 1541. A bill to aid dislocated workers and rebuild communities devastated by international trade, and for other purposes; to the Committee on Finance.

By Mr. JOHNSON:

S. 1542. A bill to amend the Internal Revenue Code of 1986 to enhance the economic future of Native Americans; to the Committee on Finance.

By Mrs. CLINTON (for herself, Mr. ENSIGN, and Mr. BINGAMAN):

S. 1543. A bill to amend and improve provisions relating to the workforce investment and adult education systems of the Nation; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FEINGOLD:

S. 1544. A bill to provide for data-mining reports to Congress, to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. DURBIN, Mr. LUGAR, Mr. LEAHY, Mr. CRAIG, Mr. FEINGOLD, Mr. CRAPO, and Mr. GRASSLEY):

S. 1545. A bill to amend the illegal immigration Reform and Immigrant Responsiblity Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents; to the Committee on the Judiciary.

By Mr. MCCONNELL (for himself and Mr. LIEBERMAN):

S. 1546. A bill to provide small businesses certain protection from litigation excesses and to limit the product liability of nonmanufacturer product sellers; to the Committee on the Judiciary.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1547. A bill to amend title XXI of the Social Security Act to make a technical correction with respect to the definition of qualifying State; considered and passed.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. FRIST, Mr. DASCHLE, Mr. DOMENICI, Mr. BINGAMAN, Mr. INHOFE, Mr. JEFFORDS, Mr. THOMAS, Mr. VOINOVICH, Mr. CONRAD, Mrs. LINCOLN, Mr. COLEMAN, Mr. DORGAN, Mr. BOND, Mr. HARKIN, Mr. DAYTON, Mr. DURBIN, Mr. TALENT, Mr. NELSON of Nebraska, and Mr. BROWNBACK):

S. 1548. A bill to amend the Internal Revenue Code of 1986 to provide incentives for the production of renewable fuels and to simplify the administration of the Highway Trust Fund fuel excise taxes, and for other purposes; to the Committee on Finance.

By Mrs. DOLE (for herself and Mr. ROBERTS):

S. 1549. A bill to amend the Richard B. Russell National School Lunch Act to phase out reduced price lunches and breakfasts by phasing in an increase in the income eligibility guidelines for free lunches and breakfasts; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GREGG:

S. 1550. A bill to change the 30-year treasury bond rate to a composite corporate rate, and to establish a commission on defined benefit plans; to the Committee on Finance.

By Mr. MCCAIN:

S. 1551. A bill to provide educational opportunities for disadvantaged children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. MURKOWSKI (for herself and Mr. WYDEN):

S. 1552. A bill to amend title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 to strengthen protections of civil liberties in the exercise of the foreign intelligence surveillance authorities under Federal law, and for other purposes; to the Committee on the Judiciary.

By Mr. CRAIG:

S. 1553. A bill to amend title 18, United States Code, to combat, deter, and punish individuals and enterprises engaged in organized retail theft; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LEAHY (for himself and Mr. DURBIN):

S. Res. 207. A resolution amending the Standing Rules of the Senate to provide that it is not in order in a committee to ask questions regarding a presidential nominee's religious affiliation; submitted and read.

By Mr. AKAKA:

S. Res. 208. A resolution expressing the sense of the Senate in support of improving American defenses against the spread of infectious diseases; to the Committee on Health, Education, Labor, and Pensions.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. WARNER, Ms. STABENOW, and Mr. DODD):

S. Res. 209. A resolution recognizing and honoring Woodstock, Vermont, native Hiram Powers for his extraordinary and enduring contributions to American scuplture; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. KENNEDY, Mr. DODD, and Mr. ALEXANDER):

S. Res. 210. A resolution expressing the sense of the Senate that supporting a balance between work and personal life is in the best interest of national worker productivity, and that the President should issue a proclamation designating October as ''National Work and Family Month''; to the Committee on the Judiciary.

By Mr. SESSIONS (for himself, Mr. KYL, Mrs. FEINSTEIN, Mr. CRAIG, Mr. GRAHAM of South Carolina, Mr. CHAMBLISS, Mr. FEINGOLD, Mr. BYRD, Mr. DORGAN, Mr. KOHL, Mr. DAYTON, and Ms. MIKULSKI):

S. Res. 211. A resolution expressing the sense of the Senate regarding the temporary entry provisions in the Chile and Singapore Free Trade Agreements; considered and agreed to.

By Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, and Mr. BIDEN):

S. Res. 212. A resolution welcoming His Holiness the Fourteenth Dalai Lama and recognizing his commitment to non-violence, human rights, freedom, and democracy; to the Committee on Foreign Relations.

By Mrs. LINCOLN (for herself, Mr. KENNEDY, and Mr. EDWARDS):

S. Res. 213. A resolution designating August 2003, as ''National Missing Adult Awareness Month,'' considered and agreed to.

By Mrs. HUTCHISON (for herself, Mr. CORNYN, Ms. SNOWE, Mr. BROWNBACK, Mr. CHAMBLISS, Mr. BOND, Ms. COLLINS, Mr. ENSIGN, Mr. DASCHLE, Mr. NICKLES, Mr. LAUTENBERG, Mr. BIDEN, Mr. INOUYE, Mrs. CLINTON, Mr. ALLARD, Mrs. MURRAY, Mr. DORGAN, Mr. WYDEN, Mr. PRYOR, and Mr. CONRAD):

S. Res. 214. A resolution congratulating Lance Armstrong for winning the 2003 Tour de France; considered and agreed to.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 215. A resolution to authorize representation by the Senate Legal Counsel in the case of Wagner v. United States Senate Committee on the Judiciary, et al. considered and agreed to.

ADDITIONAL COSPONSORS

S. 150

At the request of Mr. BROWNBACK, his name was added as a cosponsor of S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

S. 150

At the request of Mr. BAYH, his name was added as a cosponsor of S. 150, supra.

S. 150

At the request of Mr. SMITH, his name was added as a cosponsor of S. 150, supra.

S. 198

At the request of Mr. SMITH, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 198, a bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes.

S. 229

At the request of Mr. JOHNSON, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S . 229, a bill to provide for the merger of the bank and savings association deposit insurance funds, to modernize and improve the safety and fairness of the Federal deposit insurance system, and for other purposes.

S. 465

At the request of Mrs. MURRAY, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S . 465, a bill to amend title XVIII of the Social Security Act to expand medicare coverage of certain self-injected biologicals.

S. 525

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 525, a bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to reauthorize and improve that Act.

S. 595

At the request of Mr. HATCH, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 595, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financings to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 720

At the request of Mr. GREGG, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 720, a bill to amend title IX of the Public Health Service Act to provide for the improvement of patient safety and to reduce the incidence of events that adversely effect patient safety.

S. 736

At the request of Mr. ENSIGN, the names of the Senator from Maine (Ms. COLLINS) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 846

At the request of Mr. SMITH, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 846, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums on mortgage insurance, and for other purposes.

S. 847

At the request of Mr. SMITH, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 847, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low income individuals infected with HIV.

S. 859

At the request of Mr. CORZINE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 859, a bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other diseases.

S. 884

At the request of Ms. LANDRIEU, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 884, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 950

At the request of Mr. ENZI, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 950, a bill to allow travel between the United States and Cuba.

S. 982

At the request of Mrs. BOXER, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 1053

At the request of Mr. DASCHLE, his name was added as a cosponsor of S. 1053, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

S. 1112

At the request of Mr. KERRY, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1112, a bill to amend title 38, United States Code, to permit Department of Veterans Affairs pharmacies to dispense medications on prescriptions written by private practitioners to veterans who are currently awaiting their first appointment with the Department for medical care, and for other purposes.

S. 1120

At the request of Mr. BAUCUS, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 1120, a bill to establish an Office of Trade Adjustment Assistance, and for other purposes.

S. 1139

At the request of Mr. DEWINE, the name of the Senator from Nebraska

(Mr. NELSON) was added as a cosponsor of S. 1139, a bill to direct the National Highway Traffic Safety Administration to establish and carry out traffic safety law enforcement and compliance campaigns, and for other purposes.

S. 1142

At the request of Mr. BINGAMAN, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Illinois (Mr. DURBIN) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 1142, a bill to provide disadvantaged children with access to dental services.

S. 1177

At the request of Mr. HATCH, the names of the Senator from Vermont (Mr. LEAHY), the Senator from Massachusetts (Mr . KENNEDY), the Senator from Ohio (Mr. DEWINE) and the Senator from Nevada (Mr. REID) were added as cosponsors of S . 1177, a bill to ensure the collection of all cigarette taxes, and for other purposes.

S. 1222

At the request of Mr. NELSON of Nebraska, the names of the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 1222, a bill to amend title XVIII of the Social Security Act to require the Secretary of Health and Human Services, in determining eligibility for payment under the prospective payment system for inpatient rehabilitation facilities, to apply criteria consistent with rehabilitation impairment categories established by the Secretary for purposes of such prospective payment system.

S. 1265

At the request of Mr. CORZINE, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1265, a bill to limit the applicability of the annual updates to the allowance for State and other taxes in the tables used in the Federal Needs Analysis Methodology for the award year 2004-2005, published in the Federal Register on May 30, 2003.

S. 1283

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 1283, a bill to require advance notification of Congress regarding any action proposed to be taken by the Secretary of Veterans Affairs in the implementation of the Capital Asset Realignment for Enhanced Services initiative of the Department of Veterans Affairs, and for other purposes.

S. 1298

At the request of Mr. AKAKA, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1298, a bill to amend the Farm Security and Rural Investment Act of 2002 to ensure the humane slaughter of non-ambulatory livestock, and for other purposes.

S. 1303

At the request of Mr. BROWNBACK, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 1303, a bill to amend title XVIII of the Social Security Act and otherwise revise the Medicare Program to reform the method of paying for covered drugs, drug administration services, and chemotherapy support services.

S. 1323

At the request of Mr. LEAHY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1323, a bill to extend the period for which chapter 12 of title 11, United States Code, is reenacted by 6 months.

S. 1344

At the request of Mr. CORZINE, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1344, a bill to amend the Electronic Fund Transfer Act to require additional disclosures relating to exchange rates in transfers involving international transactions, and for other purposes.

S. 1369

At the request of Mr. AKAKA, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1369, a bill to ensure that prescription drug benefits offered to medicare eligible enrollees in the Federal Employees Health Benefits Program are at least equal to the actuarial value of the prescription drug benefits offered to enrollees under the plan generally.

S. 1390

At the request of Mr. ENSIGN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1390, a bill to protect children and their parents from being coerced into administering a controlled substance in order to attend school, and for other purposes.

S. 1397

At the request of Mr. GREGG, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 1397, a bill to prohibit certain abortion-related discrimination in governmental activities.

S. 1414

At the request of Mr. HATCH, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1414, a bill to restore second amendment rights in the District of Columbia.

S. 1434

At the request of Mrs. LINCOLN, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from New York (Mrs. CLINTON), the Senator from Delaware (Mr. BIDEN), the Senator from South Dakota (Mr. JOHNSON), the Senator from Washington (Mrs. MURRAY), the Senator from New York (Mr. SCHUMER), the Senator from Arkansas (Mr. PRYOR), the Senator from Vermont (Mr. LEAHY), the Senator from Maryland (Ms. MIKULSKI), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Ms. CANTWELL), the Senator from New Jersey (Mr. CORZINE), the Senator from Indiana (Mr. BAYH), the Senator from Florida (Mr. GRAHAM), the Senator from South Dakota (Mr. DASCHLE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Vermont (Mr. JEFFORDS), the Senator from Florida (Mr. NELSON), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Wisconsin (Mr. KOHL), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. DODD), the Senator from North Dakota (Mr. CONRAD), the Senator from Louisiana (Mr. BREAUX), the Senator from Montana (Mr. BAUCUS), the Senator from Minnesota (Mr. DAYTON), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Nevada (Mr. REID), the Senator from Nebraska (Mr. NELSON), the Senator from North Dakota (Mr. DORGAN) and the Senator from North Carolina (Mr. EDWARDS) were added as cosponsors of S. 1434, a bill to amend the Internal Revenue Code of 1986 to accelerate the increase in the refundability of the child tax credit, and for other purposes.

S. 1459

At the request of Mr. MCCAIN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1459, a bill to provide for reform of management of Indian trust funds and assets under the jurisdiction of the Department of the Interior, and for other purposes.

S. 1470

At the request of Mr. SARBANES, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1470, a bill to establish the Financial Literacy and Education Coordinating Committee within the Department of the Treasury to improve the state of financial literacy and education among American consumers.

S. 1481

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 1481, a bill to prohibit the application of the trade authorities procedures with respect to implementing bills that contain provisions regarding the entry of aliens.

S. 1485

At the request of Mr. KENNEDY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1485, a bill to amend the Fair Labor Standards Act of 1938 to protect the rights of employees to receive overtime compensation.

S. 1493

At the request of Mr. CHAMBLISS, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1493, a bill to promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States.

S. RES. 30

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. Res. 30, a resolution expressing the sense of the Senate that the President should designate the week beginning September 14, 2003, as ''National Historically Black Colleges and Universities Week''.

S. RES. 200

At the request of Mr. JOHNSON, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Oregon (Mr. WYDEN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Nebraska (Mr. NELSON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. Res. 200, a resolution expressing the sense of the Senate that Congress should adopt a conference agreement on the child tax credit and on tax relief for military personnel.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932-33.

S. RES. 204

At the request of Mr. BIDEN, the names of the Senator from North Carolina (Mrs. DOLE), the Senator from Texas (Mr. CORNYN), the Senator from New York (Mr. SCHUMER), the Senator from New Jersey (Mr. CORZINE) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. Res. 204, a resolution designating the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

AMENDMENT NO. 1405

At the request of Mr. MILLER, the name of the Senator from Kentucky (Mr. MCCONNELL) was added as a cosponsor of amendment No. 1405 intended to be proposed to S. 14, a bill to enhance the energy security of the United States, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUNNING (for himself, Mr. BREAUX, and Mr. BOND):

S. 1506. A bill to amend the Internal Revenue Code of 1986 to allow distilled spirits wholesalers a credit against income tax for their cost of carrying Federal excise taxes prior to the sale of the product bearing the tax; to the Committee on Finance.

Mr. BUNNING. Mr. President, I rise today to introduce legislation that will resolve a longstanding inequity in the tax treatment of U.S. distilled spirits that penalizes the wholesalers, and in some cases suppliers, of these products.

Under current law, wholesalers of distilled spirits are not required to pay the Federal excise tax on imported spirits until after the product is removed from a bonded warehouse for sale to a retailer.

In contrast, the tax on domestically produced spirits is included as part of the purchase price and passed on from the supplier to wholesaler. After factoring in the Federal excise tax (FET)—which is $13.50 per proof gallon—domestically produced spirits can cost wholesalers 40 percent more to purchase than comparable imported spirits.

In some instances, wholesalers and even suppliers can carry this tax-paid inventory for an average of 60 days before selling it to a retailer. Interest charges—more commonly referred to as float—resulting from financing the Federal excise tax can be quite considerable.

For example, at a 5 percent interest rate on the sale of 100,000 cases of domestic spirits, a wholesaler will incur finance charges of $21,106.85 for loans related to underwriting the cost of paying the Federal excise tax. It is important to note that it is not uncommon for wholesalers to sell a million or more cases per year of domestic spirits.

The costs associated with financing Federal excise taxes amount to a tax on a tax, making the effective rate of the Federal excise tax for domestic spirits much higher than $13.50 per proof gallon.

The Distilled Spirits Tax Equity Act would give wholesalers and suppliers in bailment states a tax credit towards the cost of financing the FET for domestically produced products.

I believe this legislation is fundamentally fair and will help protect and create jobs for the wholesale tier in Kentucky and other States. However, I wish to emphasize that I will reject any connection between a repeal of Section 5010 within the Internal Revenue Code or an increase in federal taxes for distilled spirits. Tax equity for one tier should not be achieved by placing additional burden on other tiers within the same industry.

My colleagues, Senators BOND and BREAUX join me in introducing this legislation, which the Joint Tax Committee estimates would reduce Federal revenues by approximately $249 million over ten years. Congressmen COLLINS and NEAL have introduced similar legislation that has garnered significant support in the House of Representatives. I urge my colleagues to support this legislation when it comes before the Senate.

By Mr. FEINGOLD (for himself, Mr. BINGAMAN, Mr. KENNEDY, Ms. CANTWELL, Mr. DURBIN, Mr. WYDEN, Mr. CORZINE, Mr. AKAKA, and Mr. JEFFORDS):

S. 1507. A bill to protect privacy by limiting the access of the government to library, bookseller, and other personal records for foreign intelligence and counterintelligence purposes; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I introduce the Library, Bookseller, and Personal Records Privacy Act.

This bill would amend the Patriot Act to protect the privacy of law-abiding Americans. It would set reasonable limits on the Federal Government's access to library, bookseller, medical, and other sensitive, personal information under the Foreign Intelligence Surveillance Act and related foreign intelligence authority.

I am pleased that several of my distinguished colleagues—Senators BINGAMAN, KENNEDY, CANTWELL, DURBIN, WYDEN, CORZINE, AKAKA, and JEFFORDS—have joined me as original cosponsors of this important legislation.

I and millions of other patriotic Americans love our country and support our military men and women in their difficult missions abroad, but worry about the fate of our Constitution here at home.

Much of our Nation's strength comes from our constitutional liberties and respect for the rule of law. That is what has kept us free for our two and a quarter century history. Our constitutional freedoms, our American values, are what make our country worth fighting for in the fight against terrorism.

Here at home, there is no question that the FBI needs ample resources and legal authority to prevent future acts of terrorism. But the Patriot Act went too far when it comes to the government's access to personal information about law-abiding Americans.

Even though in the end I opposed the Patriot Act, there were several provisions that I did support. For example, Congress was right to expand the category of business records that the FBI could obtain by subpoena pursuant to the Foreign Intelligence Surveillance Act. Prior to the Patriot Act, the FBI could seek a court order to obtain only travel records—such as airline, hotel, and car rental records—and records maintained by storage facilities. The Patriot Act allows any business records to be subpoenaed. I don't quibble with that change.

But what my colleagues and I do find problematic—and an increasing number of Americans who value their privacy and First Amendment rights agree with us—is that the current law allows the FBI broad, almost unfettered access to personal information about law-abiding Americans who have no connection to terrorism or spying.

Section 215 of the Patriot Act requires the FBI to show in an application to the court for a subpoena that the documents are ''sought for'' an international terrorism or foreign intelligence investigation. There is no requirement that the FBI make a showing of individualized suspicion that the documents relate to a suspected terrorism or spy.

In other words, under current law, the FBI could serve a subpoena on a library for all the borrowing records of its patrons or on a bookseller for the

purchasing records of its customers simply by asserting that they want the records for a terrorism investigation.

During the last year, librarians and booksellers have become increasingly concerned by the potential for abuse of this law. I was pleased to stand with the American Booksellers Association and the Free Expression Network a little over a year ago when we first started to raise these concerns.

Librarians and booksellers are concerned that under the Patriot Act, the FBI could seize records from libraries and booksellers in order to monitor what books Americans have purchased or borrowed, or who has used a library's or bookstore's internet computer stations, even if there is no evidence that the person is a terrorist or spy, or has any connection to a terrorist or spy.

These concerns are so strong, that some librarians across the country have taken the unusual step of destroying records of patrons' book and computer use, as well as posting signs on computer stations warning patrons that whatever they read or access on the internet could be monitored by the Federal Government.

As a librarian in California said, ''We felt strongly that this had to be done. . . . The government has never had this kind of power before. It feels like Big Brother.''

And as the executive director of the American Library Association said, ''This law is dangerous. . . . I read murder mysteries—does that make me a murderer? I read spy stories—does that mean I'm a spy? There's no clear link between a person's intellectual pursuits and their actions.''

The American people do not know how many or what kind of requests federal agents have made for library records under the Patriot Act. The Justice Department refuses to release that information to the public.

But in a survey released by the University of Illinois at Urbana-Champaign, about 550 libraries around the Nation reported having received requests from Federal or local law enforcement during the past year. About half of the libraries said they complied with the law enforcement request, and another half indicated that they had not.

Americans don't know much about these incidents, because the law also contains a provision that prohibits anyone who receives a subpoena from disclosing that fact to anyone.

David Schwartz, president of Harry W. Schwartz Bookshops, the oldest and largest independent bookseller in Milwaukee, summed up well the American values at stake when he said: ''The FBI already has significant subpoena powers to obtain records. There is no need for the government to invade a person's privacy in this way. This is a uniquely un-American tool, and it should be rejected. The books we read are a very private part of our lives. People could stop buying books, and they could be terrified into silence.''

Afraid to read books, terrified into silence. Is that the America we want? Is that the America where we'd like to live? I don't think so. And I hope my colleagues will agree.

It is time to reconsider those provisions of the Patriot Act that are un-American and, frankly, un-patriotic.

Bu my concerns with the Patriot Act go beyond library and bookseller records. Under section 215 of the Patriot Act, the FBI could seek any records maintained by a business. These business records could contain sensitive, personal information—for example, medical records maintained by a doctor or hospital or credit records maintained by a credit agency. All the FBI would have to do is simply assert that the records are ''sought for'' its terrorism or foreign intelligence investigation.

Section 215 of the Patriot Act goes too far. Americans rightfully have a reasonable expectation of privacy in their library, bookstore, medical, financial, or other records containing personal information. Prudent safeguards are need to protect these legitimate privacy interests.

The Library, Bookseller, and Personal Records Privacy Act is a reasonable solution. It would restore a pre-Patriot Act requirement that the FBI make a factual, individualized showing that the records sought pertain to a suspected terrorist or spy.

My bill will not prevent the FBI from doing its job. My bill recognizes that the post-September 11 world is a different world. There are circumstances when the FBI should legitimately have access to library, bookseller, or other personal information.

I would like to take a moment to explain how the safeguard in my bill would be applied. Suppose the FBI is conducting an investigation of an international terrorist organization. It has information that suspected members of the group live in a particular neighborhood. The FBI would like to serve a subpoena on the library in the suspects' neighborhood. Under current law, the FBI could decide to ask the library for all records concerning anyone who has ever borrowed a book or used a computer, and what books were borrowed, simply by asserting that the documents are sought for a terrorism investigation. But under my bill, the FBI could not do so. The FBI would have to set forth specific and articulable facts giving reason to believe that the person to whom the records pertain is a suspected terrorist. The FBI could subpoena only those library records—such as borrowing records or computer sign-in logs—that pertain to the suspected terrorists. The FBI could not obtain library records concerning individuals who are not suspected terrorists.

So, under my bill, the FBI can still obtain documents that it legitimately needs, but my bill would also protect the privacy of law-abiding Americans. I might add, that if, as the Justice Department says, the FBI is using its Patriot Act powers in a responsible manner, does not seek the records of law-abiding Americans, and only seeks the records of suspected terrorists or suspected spies, then there is no reason for the Department to object to my bill.

The second part of my bill would address privacy concerns with another Federal law enforcement power expanded by the Patriot Act—the FBI's national security letter authority, or what is sometimes referred to as ''administrative subpoena'' authority because the FBI does not need court approval to use this power.

My bill would amend section 505 of the Patriot Act. Part of this section relates to the production of records maintained by electronic communications providers. Libraries or bookstores with internet access for customers could be deemed ''electronic communication providers'' and therefore be subject to a request by the FBI under its administrative subpoena authority.

As I mentioned earlier, some librarians are so concerned about the potential for abuse by the FBI that they have taken matters into their own hands before the FBI knocks on their door. Some librarians have begun shredding on a daily basis sign-in logs and other documents relating to the public's use of library computer terminals to access the Internet.

Again, safeguards are needed to ensure that any individual who accesses the internet at a library or bookstore does not automatically give up all expectations of privacy. Like the section 215 I've discussed, my bill would require an individualized showing by the FBI of how the records of internet usage maintained by a library or bookseller pertain to a suspected terrorist or spy.

Yes, the American people want the FBI to be focused on preventing terrorism. And, yes, it may make sense to make some changes to the law to allow the FBI access to the information that it needs to prevent terrorism. But we do not need to change the values that constitute who we are as a nation in order to protect ourselves from terrorism. We can protect both our nation and our privacy and civil liberties.

An increasing number of Americans are beginning to understand that the Patriot Act went too far. Three States and over 130 cities and counties across the country have now passed resolutions expressing opposition to the Patriot Act. And it's not just the Berkeleys and Madisons of the Nation, but other States and communities with strong libertarian values, such as Alaska and cities in Montana, have passed such resolutions.

I have many concerns with the Patriot Act. I am not seeking to repeal it, in whole or in part. My colleagues and I are only seeking to modify two provisions that pose serious potential for abuse.

The privacy of law-abiding Americans is at stake. Congress should act to

protect our privacy. And my bill is a reasonable approach to do just that.

I urge my colleagues to join me and support the Library, Bookseller, and Personal Records Privacy Act.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1507

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Library, Bookseller, and Personal Records Privacy Act''.

SEC. 2. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO LIBRARY, BOOKSELLER, AND OTHER PERSONAL RECORDS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) APPLICATIONS FOR ORDERS.—Subsection (b) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(3) shall specify that there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.''.

(b) ORDERS.—Subsection (c)(1) of that section is amended by striking ''finds'' and all that follows and inserting ''finds that—

''(A) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; and

''(B) the application meets the other requirements of this section.''.

(c) OVERSIGHT OF REQUESTS FOR PRODUCTION OF RECORDS.—Section 502 of that Act (50 U.S.C. 1862) is amended—

(1) in subsection (a), by striking ''the Permanent'' and all that follows through ''the Senate'' and inserting ''the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate''; and

(2) in subsection (b), by striking ''On a semiannual basis,'' and all that follows through ''a report setting forth'' and inserting ''The report of the Attorney General to the Committees on the Judiciary of the House of Representatives and the Senate under subsection (a) shall set forth''.

SEC. 3. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO INFORMATION ON COMPUTER USERS AT BOOKSELLERS AND LIBRARIES UNDER NATIONAL SECURITY AUTHORITY.

(a) IN GENERAL.—Section 2709 of title 18, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

''(e) RECORDS OF BOOKSELLERS AND LIBRARIES.—(1) When a request under this section is made to a bookseller or library, the certification required by subsection (b) shall also specify that there are specific and articulable facts giving reason to believe that the person or entity to whom the records pertain is a foreign power or an agent of a foreign power.

''(2) In this subsection:

''(A) The term 'bookseller' means a person or entity engaged in the sale, rental, or delivery of books, journals, magazines, or other similar forms of communication in print or digitally.

''(B) The term 'library' means a library (as that term is defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2))) whose services include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally to patrons for their use, review, examination, or circulation.

''(C) The terms 'foreign power' and 'agent of a foreign power' have the meaning given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).''.

(b) SUNSET OF CERTAIN MODIFICATIONS ON ACCESS.—Section 224(a) of the USA PATRIOT ACT of 2001 (Public Law 107–56; 115 Stat. 295) is amended by inserting ''and section 505'' after ''by those sections)''.

By Mr. HAGEL (for himself, Mr. SUNUNU, and Mrs. DOLE):

S. 1508. A bill to address regulation of secondary mortgage market enterprises, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. HAGEL. Mr. President, I rise today to introduce, along with my colleagues Senator SUNUNU and Senator DOLE, the Federal Enterprise Regulatory Reform Act of 2003. This is needed regulatory reform at a critical time for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

There is no doubt that our housing government sponsored enterprises (GSEs) have been successful in carrying out their mission of creating a secondary market for home mortgages. The housing market has remained strong through tough economic times, and homeownership in this country is at an all-time high.

The housing GSEs, however, are uncommon institutions with a unique set of responsibilities and stakeholders. Fannie and Freddie are chartered by Congress, limited in scope, and are subject to Congressional mandates, yet they are publicly traded companies with all the earnings pressure that Wall Street demands. Additionally, Fannie and Freddie enjoy an implicit guarantee by the Federal Government that has aided them in developing substantial clout on Wall Street. With their influence in the markets, their ability to raise capital at near-Treasury Bill rates, and their use of the most sophisticated portfolio management tools, Fannie and Freddie today are no longer simply secondary market facilitators for mortgages.

Freddie Mac's recent disclosure of management failures and accounting deficiencies resulting in upwards of $4.5 billion in understated earnings precipitated the need for Congress to exercise its oversight of the GSEs. The Senate Banking Committee has held one hearing already and more are planned after our August recess.

If we are to continue to provide GSEs with the framework to operate under an implied government backing, I believe that they should be held to a higher standard than private organizations and subject to more scrutiny than the private sector. Furthermore, I believe it is possible to realign oversight and operating rules for Fannie and Freddie without jeopardizing the strong housing market that America enjoys today.

It is my view that the Office of Federal Housing Enterprise Oversight (OFHEO) has not been given the tools needed to effectively regulate Fannie Mae and Freddie Mac. Our legislation would create a new, stronger regulator in the Department of the Treasury. Treasury regulates banks and other financial institutions through the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS), and it has the experience and expertise needed to supervise Fannie Mae and Freddie Mac. Our bill also would provide the new regulator with enhanced regulatory flexibility and enforcement tools like those afforded to OCC and OTS. Furthermore, the bill would: give OFES oversight of Fannie Mae and Freddie Mac's ''mission'' as well as safety and soundness; give OFES authority to regulate the type and amount of non-mission related assets Fannie Mae and Freddie Mac can hold; give OFES enhanced enforcement powers much like those of other financial regulators; fund OFES through assessments instead of through Congressional appropriations; require several government studies, including one on the risk implications of GSEs purchasing their own mortgage backed securities, one on the feasibility of merging OFES with the Federal Housing Finance Board (FHFB), and one on the feasibility of consolidating OFES with the Office of Thrift Supervision (OTS).

This reform is important to restoring and maintaining the confidence that investors and the markets require. In light of the recent problems at Freddie Mac, it is even more important. I urge my colleagues to support this reform effort and invite them to cosponsor our bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1508

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Enterprise Regulatory Reform Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—REFORM OF REGULATION OF FANNIE MAE AND FREDDIE MAC

Subtitle A—Improvement of Supervision

Sec. 101. Establishment of Office of Federal Enterprise Supervision in the Department of the Treasury.
Sec. 102. Duties and authorities of Director and HUD.
Sec. 103. Examiners and accountants.
Sec. 104. Regulations.
Sec. 105. Assessments.
Sec. 106. Independence of Director in congressional testimony and recommendations.
Sec. 107. Limitation on nonmission-related assets.
Sec. 108. Reports.
Sec. 109. Risk-based capital test for enterprises.
Sec. 110. Minimum and critical capital levels.
Sec. 111. Definitions.

Subtitle B—Prompt Corrective Action

Sec. 131. Capital classifications.
Sec. 132. Supervisory actions applicable to undercapitalized enterprises.
Sec. 133. Supervisory actions applicable to significantly undercapitalized enterprises.

Subtitle C—Enforcement Actions

Sec. 151. Cease-and-desist proceedings.
Sec. 152. Temporary cease-and-desist proceedings.
Sec. 153. Removal and prohibition authority.
Sec. 154. Enforcement and jurisdiction.
Sec. 155. Civil money penalties.
Sec. 156. Criminal penalty.

Subtitle D—Reports to Congress

Sec. 161. Studies and reports.

Subtitle E—General Provisions

Sec. 171. Conforming and technical amendments.
Sec. 172. Effective date.

TITLE II—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

Sec. 201. Abolishment of OFHEO.
Sec. 202. Continuation and coordination of certain regulations.
Sec. 203. Transfer and rights of employees of OFHEO.
Sec. 204. Transfer of property and facilities.

TITLE I—REFORM OF REGULATION OF FANNIE MAE AND FREDDIE MAC

Subtitle A—Improvement of Supervision

SEC. 101. ESTABLISHMENT OF OFFICE OF FEDERAL ENTERPRISE SUPERVISION IN THE DEPARTMENT OF THE TREASURY.

(a) IN GENERAL.—Part 1 of Subtitle A of title XIII of the Housing and Community Development Act of 1992 is amended by striking sections 1311 and 1312 (12 U.S.C. 4511, 4512) and inserting the following:

"SEC. 1311. ESTABLISHMENT OF OFFICE OF FEDERAL ENTERPRISE SUPERVISION.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established the Office of Federal Enterprise Supervision, which shall be an office in the Department of the Treasury.

''(2) AUTHORITY.—The Office shall succeed to the authority of the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the general regulatory and any other authority of the Secretary of Housing and Urban Development with respect to the enterprises (except as specifically provided otherwise in this Act, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and any other provision of Federal law).

''(b) PROHIBITION OF MERGER OF OFFICE.—Notwithstanding any other provision of this law, the Secretary of the Treasury may not merge or consolidate the Office, or any of the functions or responsibilities of the Office, with any function or program administered by the Secretary.

''(c) SAVINGS PROVISION.—The authority of the Director to take actions under subtitles B and C does not in any way limit the general supervisory and regulatory authority granted to the Director under subsection (a).

"SEC. 1312. DIRECTOR.

''(a) ESTABLISHMENT OF POSITION.—There is established the position of the Director of the Office of Federal Enterprise Supervision, who shall be the head of the Office.

''(b) APPOINTMENT; TERM.—

''(1) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

''(2) TERM.—The Director shall be appointed for a term of 5 years.

''(3) VACANCY.—

''(A) IN GENERAL.—A vacancy in the position of Director that occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established under paragraph (1).

''(B) TERM .—The Director appointed to fill a vacancy under subparagraph (A) shall be appointed only for the remainder of such term.

''(4) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which the individual was appointed until a successor Director has been appointed.

''(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development on the date of enactment of the Federal Enterprise Regulatory Reform Act of 2003, shall be the Director until the date on which that individual's term as Director of the Office of Federal Housing Enterprise Oversight would have expired.

''(c) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any enterprise, nor hold any office, position, or employment in any enterprise.''.

(b) APPOINTMENT OF DIRECTOR.—Notwithstanding the effective date under section 172 or any other provision of law, the President may, at any time after the date of enactment of this Act, appoint an individual to serve as the Director in accordance with the provisions of the amendment made by subsection (a) of this section.

SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR AND HUD.

(a) IN GENERAL.—Section 1313 of the Housing and Community Development Act of 1992 (12 U.S.C. 4513) is amended to read as follows:

"SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.

''(a) DUTIES.—

''(1) PRINCIPAL DUTIES.—The principal duties of the Director shall be to ensure that the enterprises—

''(A) operate in a financially safe and sound manner;

''(B) carry out their missions in a financially safe and sound manner and only through activities that have been authorized under, and are consistent with the purposes of, the provisions of Federal law that charter the enterprises; and

''(C) remain adequately capitalized.

''(2) OTHER DUTIES.—To the extent consistent with paragraph (1), the duty of the Director shall be to exercise general supervisory and regulatory authority over the enterprises, in accordance with this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and any other provisions of law.

''(b) AUTHORITY EXCLUSIVE OF SECRETARY.—Except as specifically provided under this Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any other provision of Federal law, the authority of the Director with respect to the enterprises shall not be subject to the review, approval, or intervention of the Secretary of the Treasury.

''(c) DELEGATION OF AUTHORITY.—The Director may delegate to officers and employees of the Director any of the functions, powers, and duties of the Director, with respect to supervision and regulation of the enterprises, as the Director considers appropriate.''.

(b) PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.—Part 1 of Subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.) is amended by adding at the end the following:

"SEC. 1319H. PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.

''(a) IN GENERAL.—The Director shall require each enterprise to obtain the approval of the Director for any new program of the enterprise before implementing the program.

''(b) STANDARD FOR APPROVAL.—The Director shall approve any new program of an enterprise for purposes of subsection (a) unless—

''(1) in the case of a new program of the Federal National Mortgage Association, the Director determines that the program is not authorized under section 304 or paragraph (2), (3), (4), or (5) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b));

''(2) in the case of a new program of the Federal Home Loan Mortgage Corporation, the Director determines that the program is not authorized under paragraph (1), (4), or (5) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.); or

''(3) the Director determines that the new program is not in the public interest.

''(c) PROCEDURE FOR APPROVAL.—

''(1) SUBMISSION OF REQUEST.—An enterprise shall submit to the Director a written request for approval of a new program under subparagraph (A) that describes the program in such form as prescribed by order or regulation of the Director.

''(2) RESPONSE.—

''(A) IN GENERAL.—Not later than 45 days after the date of submission of a request for approval under paragraph (1), the Director shall—

''(i) approve the request; or

''(ii) deny the request and submit a report explaining the reasons for the denial to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate.

''(B) EXTENSION.—The Director may extend the time period under subparagraph (A) for a single additional 15 day period only if the Director requests additional information from the enterprise.

''(3) FAILURE TO RESPOND.—If the Director fails to approve the request or fails to submit a report under paragraph (2)(A)(ii) during the period provided, the request shall be considered to have been approved by the Director.

''(4) REVIEW OF DISAPPROVAL.—

''(A) SUBMISSION OF NEW INFORMATION.—If the Director submits a report under paragraph (2)(A)(ii) denying a request for reasons listed under paragraph (1) or (2) of subsection

(b), the Director shall allow the enterprise to submit new information in support of the request for approval.

''(B) NEW PROGRAMS NOT IN THE PUBLIC INTEREST.—If the Director submits a report under paragraph (2)(A)(ii) denying a request after finding that the program is not in the public interest under subsection (b)(3), the Director shall provide the enterprise with notice and opportunity for a hearing on the record regarding such denial.''.

(c) REPEAL OF HUD AUTHORITY.—Part 2 of Subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C.4501 et seq.) is amended by striking sections 1321 and 1322.

(d) AUTHORITY OF HUD FOR HOUSING GOALS.—

(1) IN GENERAL.—Section 1331 of the Housing and Community Development Act of 1992 (12 U.S.C. 4561) is amended—

(A) in the first sentence of subsection (a), by inserting ''of Housing and Urban Development'' after ''The Secretary''; and

(B) by adding at the end the following:

''(d) DEFINITION.—For purposes of this part, the term 'Secretary' means the Secretary of Housing and Urban Development.''.

(2) ANNUAL REPORT ON HOUSING GOALS.—Section 1324 of the Housing and Community Development Act of 1992 (12 U.S.C. 4544) is amended by inserting ''of Housing and Urban Development'' after ''Secretary'' each place such term appears.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) FANNIE MAE.—Section 302(b)(6) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716(b)(6)) is amended by striking ''Secretary under section 1322'' and inserting ''Director under section 1319H''.

(2) FREDDIE MAC.—Section 305(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(c)) is amended by striking ''Secretary under section 1322'' and inserting ''Director under section 1319H''.

(3) FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.—Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended—

(A) in paragraph (5), by striking the period; and

(B) by adding at the end the following:

''(6) the Director of the Office of Federal Enterprise Supervision.''.

SEC. 103. EXAMINERS AND ACCOUNTANTS.

(a) EXAMINATIONS.—Section 1317 of the Housing and Community Development Act of 1992 (12 U.S.C. 4517) is amended—

(1) in the second sentence of subsection (c), by striking ''The'' and inserting ''During the 3-year period that begins upon the date of enactment of the Federal Enterprise Regulatory Reform Act of 2003, the''; and

(2) in subsection (d), by striking ''Federal Reserve banks'' and inserting ''Director of the Office of Thrift Supervision''.

(b) ENHANCED AUTHORITY TO HIRE EXAMINERS AND ACCOUNTANTS.—Section 1317 of the Housing and Community Development Act of 1992 (12 U.S.C. 4517) is amended by adding at the end the following:

''(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS, AND EXAMINERS.—

''(1) APPLICABILITY.—This section applies with respect to any position of examiner, accountant, and economist at the Office, with respect to supervision and regulation of the enterprises, that is in the competitive service.

''(2) APPOINTMENT AUTHORITY.—

''(A) IN GENERAL.—The Director may appoint candidates to any position described in paragraph (1)—

''(i) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

''(ii) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

''(B) RULE OF CONSTRUCTION.—The appointment of a candidate to a position under this paragraph shall not be considered to cause such position to be converted from the competitive service to the excepted service.

''(3) REPORTS.—

''(A) IN GENERAL.—Not later than 90 days after the end of fiscal year 2003 (for fiscal year 2003) and 90 days after the end of fiscal year 2005 (for fiscal years 2004 and 2005), the Director shall submit a report with respect to its exercise of the authority granted by paragraph (2) during such fiscal years to the—

''(i) Committee on Government Reform and the Committee on Financial Services of the House of Representatives; and

''(ii) Committee on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(B) CONTENTS.—The reports submitted under subparagraph (A) shall describe the changes in the hiring process authorized by paragraph (2), including relevant information related to—

''(i) the quality of candidates;

''(ii) the procedures used by the Director to select candidates through the streamlined hiring process;

''(iii) the numbers, types, and grades of employees hired under the authority;

''(iv) any benefits or shortcomings associated with the use of the authority;

''(v) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

''(vi) the way in which managers were trained in the administration of the streamlined hiring system.''.

SEC. 104. REGULATIONS.

Section 1319G of the Housing and Community Development Act of 1992 (12 U.S.C. 4526) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) AUTHORITY.—The Director shall issue any regulations and orders necessary to carry out the duties of the Director, with respect to supervision and regulation of the enterprises, under this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), and the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and to ensure that the purposes of this title and such Acts are accomplished.''; and

(2) in subsection (c), by striking ''Committee on Banking, Finance and Urban Affairs'' and inserting ''Committee on Financial Services''.

SEC. 105. ASSESSMENTS.

Section 1316 of the Housing and Community Development Act of 1992 (12 U.S.C. 4516) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) ANNUAL ASSESSMENTS.—The Director shall establish and collect from the enterprises annual assessments in an amount not exceeding the amount sufficient to provide for all reasonable costs and expenses of the Office, including—

''(1) the expenses of any examinations under section 1317; and

''(2) the expenses of obtaining any reviews and credit assessments under subsection section 1319.'';

(2) in subsection (b), in paragraph (2), by moving the margin 2 ems to the right;

(3) in subsection (c), by adding at the end the following: ''The Director may adjust the amounts of any semiannual assessments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by an enterprise, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under subtitles B and C for an enterprise are borne only by that enterprise.'';

(4) in subsection (f), by striking ''Any assessments collected'' and all that follows and inserting the following: ''Notwithstanding any other provision of law, any assessments collected by the Director pursuant to this section shall be deposited in the Fund in an account for the Director. Any amounts in the Fund are hereby made available, without fiscal year limitation, to the Director (to the extent of amounts in the Director's account) for carrying out the supervisory and regulatory responsibilities of the Director, with respect to the enterprises, including any necessary administrative and nonadministrative expenses of the Director in carrying out the purposes of this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), and the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).''; and

(5) in subsection (g), by striking paragraphs (1) and (2) and inserting the following:

''(1) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal year, the Director shall submit a copy of the financial operating plans and forecasts for the Office to the Director of the Office of Management and Budget.

''(2) REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal year and each quarter thereof, the Director shall submit a copy of the report of the results of the operations of the Office during such period to the Director of the Office of Management and Budget.''.

SEC. 106. INDEPENDENCE OF DIRECTOR IN CONGRESSIONAL TESTIMONY AND RECOMMENDATIONS.

Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting ''the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury,'' after ''the Federal Housing Finance Board,''.

SEC. 107. LIMITATION ON NONMISSION-RELATED ASSETS.

Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended—

(1) by striking the subtitle designation and heading and inserting the following:

''Subtitle B—Required Capital Levels for Enterprises, Special Enforcement Powers, and Limitation on Nonmission-Related Assets'';

and

(2) by adding at the end the following:

''SEC. 1369E. LIMITATION ON NONMISSION-RELATED ASSETS.

''(a) IN GENERAL.—The Director may, by regulation, determine the type and amount of nonmission-related assets that an enterprise may hold at any time. The Director shall, in any such regulation, define the term 'nonmission-related asset' for purposes of this section.

''(b) RULE OF CONSTRUCTION.—Subsection (a) may not be construed to authorize an enterprise to engage in any new program relating to any nonmission-related asset without obtaining the prior approval of the Director in accordance with section 1319H.''.

SEC. 108. REPORTS.

Sections 1327 and 1328 of the Housing and Community Development Act of 1992 (12 U.S.C. 4547, 4548) are amended by striking ''Secretary'' each place it appears and inserting ''Director''.

SEC. 109. RISK-BASED CAPITAL TEST FOR ENTERPRISES.

Section 1361 of the Housing and Community Development Act of 1992 (12 U.S.C. 4611) is amended—

(1) in subsection (a)(2)(A), by inserting ", or change in such other manner as the Director considers appropriate," after "subparagraph (C),";

(2) in subsection (b)(1), by adding at the end the following: "Notwithstanding subsection (a), the Director may, in the sole discretion of the Director, make any assumptions that the Director considers appropriate regarding interest rates, home prices, and new business. Such assessment shall ensure that enterprise risk-based capital standards are, to the greatest extent feasible, comparable to those imposed by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) for comparable risk. The risk-based assessment relating to new business under this paragraph shall ensure that the enterprise is able to remain a viable enterprise in full compliance with all applicable risk-based capital and minimum capital standards, and that it can fulfill its role of ensuring appropriate secondary market liquidity throughout the stress test."; and

(3) in subsection (c)(2), by inserting ", or such other percentage as the Director considers appropriate" before the period at the end.

SEC. 110. MINIMUM AND CRITICAL CAPITAL LEVELS.

(a) MINIMUM CAPITAL LEVEL.—Section 1362 of the Housing and Community Development Act of 1992 (12 U.S.C. 4612) is amended—

(1) by striking subsection (b);

(2) by striking "(a) IN GENERAL.—"; and

(3) in the matter preceding paragraph (1), by inserting before "the sum of" the following: "the amount established by the Director, by regulation or order, as such amount may be adjusted from time-to-time by the Director to achieve the purposes of this title, that is not less than".

(b) CRITICAL CAPITAL LEVEL.—Section 1363 of the Housing and Community Development Act of 1992 (12 U.S.C. 4613) is amended, in the matter preceding paragraph (1), by inserting before "the sum of" the following: "the amount established by the Director, by regulation or order, as such amount may be adjusted from time-to-time by the Director to achieve the purposes of this title, that is not less than".

SEC. 111. DEFINITIONS.

Section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502) is amended—

(1) in paragraph (5), by striking "Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" and inserting "Federal Enterprise Supervision of the Department of the Treasury";

(2) in paragraphs (8), (9), (10), and (19), by inserting "of Housing and Urban Development" after "Secretary" each place such term appears;

(3) in paragraph (14), by striking "Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" and inserting "Federal Enterprise Supervision of the Department of the Treasury";

(4) by striking paragraph (15);

(5) by redesignating paragraphs (7) through (14) (as amended by the preceding provisions of this Act) as paragraphs (8) through (15), respectively; and

(6) by inserting after paragraph (6) the following:

"(7) ENTERPRISE-AFFILIATED PARTY.—The term 'enterprise-affiliated party' means—

"(A) any director, officer, employee, or controlling stockholder of, or agent for, an enterprise;

"(B) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or case-by-case) who participates in the conduct of the affairs of an enterprise; and

"(C) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

"(i) any violation of any law or regulation;

"(ii) any breach of fiduciary duty; or

"(iii) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the enterprise.".

Subtitle B—Prompt Corrective Action

SEC. 131. CAPITAL CLASSIFICATIONS.

Section 1364 of the Housing and Community Development Act of 1992 (12 U.S.C. 4614) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) DISCRETIONARY CLASSIFICATION.—

"(1) GROUNDS FOR RECLASSIFICATION.—The Director may reclassify an enterprise under paragraph (2) if—

"(A) at any time, the Director determines in writing that an enterprise is engaging in conduct that could result in a rapid depletion of core capital or that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly;

"(B) after notice and an opportunity for hearing, the Director determines that an enterprise is in an unsafe or unsound condition; or

"(C) pursuant to section 1371(b), the Director deems an enterprise to be engaging in an unsafe or unsound practice.

"(2) RECLASSIFICATION.—In addition to any other action authorized under this title, including the reclassification of an enterprise for any reason not specified in this subsection, if the Director takes any action described in paragraph (1) the Director may classify an enterprise—

"(A) as undercapitalized, if the enterprise is otherwise classified as adequately capitalized;

"(B) as significantly undercapitalized, if the enterprise is otherwise classified as undercapitalized; and

"(C) as critically undercapitalized, if the enterprise is otherwise classified as significantly undercapitalized.";

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following:

"(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

"(1) IN GENERAL.—An enterprise shall make no capital distribution if, after making the distribution, the enterprise would be undercapitalized.

"(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may permit an enterprise to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

"(A) is made in connection with the issuance of additional shares or obligations of the enterprise in at least an equivalent amount; and

"(B) will reduce the financial obligations of the enterprise or otherwise improve the financial condition of the enterprise.".

SEC. 132. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED ENTERPRISES.

(a) EFFECTIVE DATE FOR SUPERVISORY ACTIONS.—Section 1365(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4615(c)) is amended by striking "1-year" and inserting "6-month".

(b) SUPERVISORY ACTIONS.—Section 1365 of the Housing and Community Development Act of 1992 (12 U.S.C. 4615) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(B) by inserting before paragraph (2) the following:

"(1) REQUIRED MONITORING.—The Director shall—

"(A) closely monitor the condition of any undercapitalized enterprise;

"(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed under this section; and

"(C) periodically review the plan, restrictions, and requirements applicable to the undercapitalized enterprise to determine whether the plan, restrictions, and requirements are achieving the purpose of this section."; and

(C) by inserting at the end the following:

"(4) RESTRICTION OF ASSET GROWTH.—An undercapitalized enterprise shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

"(A) the Board has accepted the enterprise's capital restoration plan;

"(B) any increase in total assets is consistent with the plan; and

"(C) the ratio of tangible equity to assets of the enterprise increases during the calendar quarter at a rate sufficient to enable the enterprise to become adequately capitalized within a reasonable time.

"(5) PRIOR APPROVAL OF ACQUISITIONS AND ISSUANCE OF NEW PRODUCTS.—An undercapitalized enterprise shall not, directly or indirectly, acquire any interest in any entity or issue a new product unless—

"(A) the Director has accepted the capital restoration plan of the enterprise, the enterprise is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

"(B) the Director determines that the proposed action will further the purpose of this section."; and

(2) in the subsection heading for subsection (b), by striking "FROM UNDERCAPITALIZED TO SIGNIFICANTLY UNDERCAPITALIZED";

(3) by redesignating subsection (c) (as amended by subsection (a)) as subsection (d); and

(4) by inserting after subsection (b) the following:

"(c) OTHER DISCRETIONARY SAFEGUARDS.—The Director may take, with respect to an undercapitalized enterprise, any of the actions authorized to be taken under section 1366 with respect to a significantly undercapitalized enterprise, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.".

SEC. 133. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED ENTERPRISES.

Section 1366 of the Housing and Community Development Act of 1992 (12 U.S.C. 4616) is amended—

(1) in subsection (b)—

(A) in the subsection heading, by striking "DISCRETIONARY SUPERVISORY ACTIONS" and inserting "SPECIFIC ACTIONS";

(B) in the matter preceding paragraph (1), by striking "may, at any time, take any" and inserting "shall carry out this section by taking, at any time, 1 or more";

(C) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively;

(D) by inserting after paragraph (4) the following:

"(5) IMPROVEMENT OF MANAGEMENT.—Take one or more of the following actions:

"(A) NEW ELECTION OF BOARD.—Order a new election for the board of directors of the enterprise.

"(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the enterprise to dismiss from office any director or executive officer who had held office for more than 180 days

immediately before the enterprise became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the Director's enforcement powers under section 1377.

''(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS.—Require the enterprise to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).''; and

(E) by inserting at the end the following:

''(8) OTHER ACTION.—Require the enterprise to take any other action that the Director determines will better carry out the purpose of this section than any of the actions specified in this paragraph.'';

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following:

''(c) RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.—An enterprise that is classified as significantly undercapitalized may not, without prior written approval by the Director—

''(A) pay any bonus to any executive officer; or

''(B) provide compensation to any executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the enterprise became undercapitalized.''.

Subtitle C—Enforcement Actions

SEC. 151. CEASE-AND-DESIST PROCEEDINGS.

Section 1371 of the Housing and Community Development Act of 1992 (12 U.S.C. 4631) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS OF RULES OR LAWS.—

''(1) IN GENERAL.—If, in the opinion of the Director, an enterprise or any enterprise-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise or any enterprise-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the enterprise or is violating or has violated, or the Director has reasonable cause to believe that the enterprise or any enterprise-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the enterprise or any written agreement entered into with the Director, the Director may issue and serve upon the enterprise or such party a notice of charges in respect thereof.

''(2) LIMITATIONS.—The Director may not enforce compliance with—

''(A) any housing goal established under subpart B of part 2 of subtitle A of this title;

''(B) section 1336 or 1337 of this title;

''(C) subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)); or

''(D) subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)).

''(b) ISSUANCE FOR UNSATISFACTORY RATING.—If an enterprise receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the enterprise to be engaging in an unsafe or unsound practice for purposes of this subsection.''; and

(2) in subsection (c)(2), by striking ''or director'' and inserting ''director, or enterprise-affiliated party''.

SEC. 152. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.

Section 1372 of the Housing and Community Development Act of 1992 (12 U.S.C. 4632) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GROUNDS FOR ISSUANCE.—Whenever the Director determines that the violation or threatened violation or the unsafe or unsound practice or practices specified in the notice of charges served upon the enterprise or any enterprise-affiliated party under section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the enterprise, or is likely to weaken the condition of the enterprise prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may issue a temporary order requiring the enterprise or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection 1371(d).'';

(2) in subsection (b), by striking ''or director'' and inserting ''director, or enterprise-affiliated party'';

(3) in subsection (d), striking ''or director'' and inserting ''director, or enterprise-affiliated party''; and

(4) by striking subsection (e) and in inserting the following:

''(e) ENFORCEMENT.—In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued under this section, the Director may apply to the United States District Court for the District of Columbia or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for an injunction to enforce such order, and, if the court determines that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.''.

SEC. 153. REMOVAL AND PROHIBITION AUTHORITY.

(a) IN GENERAL.—Subtitle C of title XIII of the Housing and Community Development Act of 1992 is amended—

(1) by redesignating sections 1377 through 1379B (12 U.S.C. 4637–41) as sections 1379 through 1379D, respectively; and

(2) by inserting after section 1376 (12 U.S.C. 4636) the following:

''SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

''(a) AUTHORITY TO ISSUE ORDER.—Whenever the Director determines that—

''(1) any enterprise-affiliated party has, directly or indirectly—

''(A) violated—

''(i) any law or regulation;

''(ii) any cease-and-desist order which has become final;

''(iii) any condition imposed in writing by the Director in connection with the grant of any application or other request by such enterprise; or

''(iv) any written agreement between such enterprise and the Director;

''(B) engaged or participated in any unsafe or unsound practice in connection with any enterprise; or

''(C) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

''(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1)—

''(A) such enterprise has suffered or will probably suffer financial loss or other damage; or

''(B) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

''(3) such violation, practice, or breach—

''(A) involves personal dishonesty on the part of such party; or

''(B) demonstrates willful or continuing disregard by such party for the safety or soundness of such enterprise,

the Director may serve upon such party a written notice of the Director's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any enterprise.

''(b) SUSPENSION ORDER.—

''(1) SUSPENSION OR PROHIBITION AUTHORITY.—If the Director serves written notice under subsection (a) to any enterprise-affiliated party of the Director's intention to issue an order under, the Director may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the enterprise, if the Director—

''(A) determines that such action is necessary for the protection of the enterprise; and

''(B) serves such party with written notice of the suspension order.

''(2) EFFECTIVE PERIOD.—Any suspension order issued under subsection (a)—

''(A) shall become effective upon service; and

''(B) unless a court issues a stay of such order under subsection (g) of this section, shall remain in effect and enforceable until—

''(i) the date the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

''(ii) the effective date of an order issued by the Director to such party under subsection (a).

''(3) COPY OF ORDER.—If the Director issues a suspension order under subsection (a) to any enterprise-affiliated party, the Director shall serve a copy of such order on any enterprise with which such party is affiliated at the time such order is issued.

''(c) NOTICE, HEARING, AND ORDER.—A notice of intention to remove an enterprise-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an enterprise shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Director at the request of (1) such party, and for good cause shown, or (2) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the enterprise, as it may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such enterprise and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

''(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

''(1) participate in any manner in the conduct of the affairs of any enterprise;

''(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any enterprise;

''(3) violate any voting agreement previously approved by the Director; or

''(4) vote for a director, or serve or act as an enterprise-affiliated party.

''(e) INDUSTRY-WIDE PROHIBITION.—

''(1) IN GENERAL.—Except as provided in subparagraph (2), any person who, pursuant to an order issued under subsection (h), has been removed or suspended from office in an enterprise or prohibited from participating in the conduct of the affairs of an enterprise may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of any enterprise.

''(2) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this section which removes or suspends from office any enterprise-affiliated party or prohibits such party from participating in the conduct of the affairs of an enterprise, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the enterprise described in the written consent. If the Director grants such a written consent, it shall publicly disclose such consent.

''(3) VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order described in such subsection shall be treated as a violation of the order.

''(f) APPLICABILITY.—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business enterprise.

''(g) STAY OF SUSPENSION AND PROHIBITION OF ENTERPRISE-AFFILIATED PARTY.—Within 10 days after any enterprise-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of an enterprise under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the enterprise is located, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under this section, and such court shall have jurisdiction to stay such suspension or prohibition.

''(h) SUSPENSION OR REMOVAL OF ENTERPRISE-AFFILIATED PARTY CHARGED WITH FELONY.—

''(1) SUSPENSION OR PROHIBITION.—

''(A) IN GENERAL.—Whenever any enterprise-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Director may, if continued service or participation by such party may pose a threat to the enterprise or impair public confidence in the enterprise, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any enterprise.

''(B) PROVISIONS APPLICABLE TO NOTICE.—

''(i) COPY.—A copy of any notice under paragraph (1)(A) shall also be served upon the enterprise.

''(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Director.

''(2) REMOVAL OR PROHIBITION.—

''(A) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an enterprise-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the enterprise or impair public confidence in the enterprise, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise without the prior written consent of the Director.

''(B) PROVISIONS APPLICABLE TO ORDER.—

''(i) COPY.—A copy of any order under paragraph (2)(A) shall also be served upon the enterprise, whereupon the enterprise-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such enterprise.

''(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in enterprise affairs under subsection (a), (d), or (e).

''(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4) unless terminated by the Director.

''(3) AUTHORITY OF REMAINING BOARD MEMBERS.—

''(A) IN GENERAL.—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of an enterprise less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

''(B) SUSPENSION OF ALL DIRECTORS.—In the event all of the directors of an enterprise are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the enterprise and their respective successors take office.

''(4) HEARING REGARDING CONTINUED PARTICIPATION.—Within 30 days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2) of this subsection, the enterprise-affiliated party concerned may request in writing an opportunity to appear before the Director to show that the continued service to or participation in the conduct of the affairs of the enterprise by such party does not, or is not likely to, pose a threat to the interests of the enterprise or threaten to impair public confidence in the enterprise. Upon receipt of any such request, the Director shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the Director or designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument. Within 60 days of such hearing, the Director shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the enterprise will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director's decision, if adverse to such party. The Director is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

''(i) HEARINGS AND JUDICIAL REVIEW.—

''(1) VENUE AND PROCEDURE.—Any hearing provided for in this section shall be held in the District of Columbia or in the Federal judicial district in which the headquarters of the enterprise is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code. After such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to the court for final decision, the court shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

''(2) REVIEW OF ORDER.—Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) (other than an order issued with the consent of the enterprise or the enterprise-affiliated party concerned, or an order issued under subsection (h) of this section) by the filing in the United States Court of Appeals for the District of Columbia Circuit or court of appeals of the United States for the circuit in which the headquarters of the enterprise is located, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of such petition shall be transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall (except as provided in the last sentence of paragraph (1)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

''(3) PROCEEDINGS NOT TREATED AS STAY.—The commencement of proceedings for judicial review under paragraph (2) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.''.

(b) CONFORMING AMENDMENTS.—

(1) 1992 ACT.—Section 1317(f) of the Housing and Community Development Act of 1992 (12

U.S.C. 4517(f)) is amended by striking ''section 1379B'' and inserting ''section 1379D''.

(2) FANNIE MAE CHARTER ACT.—The second sentence of subsection (b) of section 308 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended by striking ''The'' and inserting ''Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the''.

(3) FREDDIE MAC ACT.—The second sentence of subparagraph (A) of section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended by striking ''The'' and inserting ''Except to the extent action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the''.

SEC. 154. ENFORCEMENT AND JURISDICTION.

Section 1375 of the Housing and Community Development Act of 1992 (12 U.S.C. 4635) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for the enforcement of any effective and outstanding notice or order issued under this subtitle or subtitle B, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.''; and

(2) in subsection (b), by striking ''or 1376'' and inserting ''1376, or 1377''.

SEC. 155. CIVIL MONEY PENALTIES.

Section 1376 of the Housing and Community Development Act of 1992 (12 U.S.C. 4636) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking ''or any executive officer or'' and inserting ''any executive officer of an enterprise, any enterprise-affiliated party, or any'';

(2) by striking subsection (b) and inserting the following:

''(b) AMOUNT OF PENALTY.—

''(1) FIRST TIER.—Any enterprise which, or any enterprise-affiliated party who—

''(A) violates any provision of this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), or any order, condition, rule, or regulation under any such title or Act, except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), or with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f));

''(B) violates any final or temporary order or notice issued pursuant to this title;

''(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such enterprise;

''(D) violates any written agreement between the enterprise and the Director; or

''(E) engages in any conduct the Director determines to be an unsafe or unsound practice,

shall forfeit and pay a civil penalty of not more than $10,000 for each day during which such violation continues.

''(2) SECOND TIER.—Notwithstanding paragraph (1)—

''(A) if an enterprise, or an enterprise-affiliated party—

''(i) commits any violation described in any subparagraph of paragraph (1);

''(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such enterprise; or

''(iii) breaches any fiduciary duty; and

''(B) the violation, practice, or breach—

''(i) is part of a pattern of misconduct;

''(ii) causes or is likely to cause more than a minimal loss to such enterprise; or

''(iii) results in pecuniary gain or other benefit to such party,

the enterprise or enterprise-affiliated party shall forfeit and pay a civil penalty of not more than $50,000 for each day during which such violation, practice, or breach continues.

''(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any enterprise which, or any enterprise-affiliated party who—

''(A) knowingly—

''(i) commits any violation described in any subparagraph of paragraph (1);

''(ii) engages in any unsafe or unsound practice in conducting the affairs of such enterprise; or

''(iii) breaches any fiduciary duty; and

''(B) knowingly or recklessly causes a substantial loss to such enterprise or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

''(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

''(A) in the case of any person other than an enterprise, an amount not to exceed $2,000,000; and

''(B) in the case of any enterprise, $2,000,000.''; and

(3) in subsection (d)—

(A) by striking ''or director'' each place such term appears and inserting ''director, or enterprise-affiliated party'';

(B) by striking ''request the Attorney General of the United States to'';

(C) by inserting '', or the United States district court within the jurisdiction of which the headquarters of the enterprise is located,'' after ''District of Columbia''; and

(D) by striking '', or may, under the direction and control of the Attorney General, bring such an action''.

SEC. 156. CRIMINAL PENALTY.

Subtitle C of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4631 et seq.) is amended by inserting after section 1377 (as added by this Act) the following:

''SEC. 1378. CRIMINAL PENALTY.

''Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any enterprise shall, notwithstanding section 3571 of title 18, be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.''.

Subtitle D—Reports to Congress

SEC. 161. STUDIES AND REPORTS.

(a) INSURED DEPOSITORY INSTITUTION HOLDINGS OF ENTERPRISE DEBT AND MORTGAGE-BACKED SECURITIES.—Not later than 180 days after the date of enactment of the Federal Enterprise Regulatory Reform Act of 2003, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board shall jointly submit a report to Congress regarding—

(1) the extent to which obligations issued or guaranteed by the enterprises (including mortgage-backed securities) are held by federally insured depository institutions, including such extent by type of institution and such extent relative to the capital of the institution;

(2) the extent to which the unlimited holdings by federally insured depository institutions of the obligations of the enterprises could produce systemic risk issues, particularly for the safety and soundness of the banking system in the United States, in the event of default or failure by an enterprise; and

(3) the effects on the enterprises, the banking industry, and mortgage markets, if prudent limits on the holdings of enterprise obligations were placed on federally insured depository institutions.

(b) PORTFOLIO OPERATIONS, RISK MANAGEMENT, AND MISSION.—

(1) IN GENERAL.—Not later than one year after the date of enactment of the Federal Enterprise Regulatory Reform Act of 2003, the Director shall submit a report to Congress—

(A) describing the holdings of the enterprises in retained mortgages and repurchased mortgage-backed securities and the use of derivatives for hedging purposes;

(B) describing the extent of such holdings relative to other assets and the risk implications of such holdings;

(C) containing an analysis of such holdings for safety and soundness or mission compliance purposes; and

(D) containing an assessment of whether such holdings and other assets of the enterprises fulfill the mission purposes of the enterprises under the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.) and the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).

(2) CONSULTATION.—The Director shall consult with the Comptroller General of the United States in preparing the report under this subsection and in conducting any research, analyses, and assessments for the report.

(c) STUDY OF MERGER OF FHFB WITH OFES.—

(1) IN GENERAL.—The Secretary of the Treasury, after consultation with the Secretary of Housing and Urban Development and the Board of Governors of the Federal Reserve System, shall study the feasibility and advisability of merging the Federal Housing Finance Board and the Office of Federal Enterprise Supervision of the Department of the Treasury.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study conducted under paragraph (1).

(d) STUDY OF CONSOLIDATION OF OTS WITH OFES.—

(1) STUDY.—The Secretary of the Treasury shall study the feasibility and efficacy of consolidating the Office of Thrift Supervision with the Office of Federal Enterprise Supervision of the Department of the Treasury.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study conducted under paragraph (1).

(e) RECOMMENDATIONS.—Each report submitted pursuant to this section shall include specific recommendations of appropriate

policies, limitations, regulations, legislation, or other actions to deal appropriately and effectively with the issues addressed by such report.

(f) DEFINITIONS.—As used in this section, the terms ''Director'' and ''enterprise'' have the meanings given those terms under section 1303 of the Housing and Community Development Act of 1992 (42 U.S.C. 4502).

(g) CLERICAL AMENDMENTS.—Part 3 of subtitle A of title XIII the Housing and Community Development Act of 1992 (106 Stat. 3969) is amended—

(1) by striking sections 1351, 1352, and 1353 (Public Law 102–550; 106 Stat. 3969), except that the provisions of law amended by such sections repealed shall not be affected by such repeal; and

(2) by striking sections 1354, 1355, and 1356 (12 U.S.C. 4601–3).

Subtitle E—General Provisions

SEC. 171. CONFORMING AND TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO 1992 ACT.—Title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.), as amended this Act, is further amended—

(1) in section 1315 (12 U.S.C. 4515)—

(A) in subsection (a)—

(i) in the subsection heading, by striking ''OFFICE PERSONNEL'' and inserting ''IN GENERAL''; and

(ii) by striking ''The'' and inserting ''Subject to title II of the Federal Enterprise Regulatory Reform Act of 2003, the'';

(B) in subsection (d)—

(i) in the subsection heading, by striking ''HUD'' and inserting ''DEPARTMENT OF THE TREASURY''; and

(ii) by striking ''Housing and Urban Development'' and inserting ''the Department of the Treasury''; and

(C) by striking subsection (f);

(2) in section 1319A (12 U.S.C. 4520)—

(A) by striking ''(a) IN GENERAL.—''; and

(B) by striking subsection (b);

(3) in section 1319F (12 U.S.C. 4525), by striking paragraph (2);

(4) in the section heading for section 1328, by striking ''**SECRETARY**'' and inserting ''**DIRECTOR**'';

(5) in section 1361 (12 U.S.C. 4611)—

(A) in subsection (e)(1), by striking the first sentence and inserting the following: ''The Director shall establish the risk-based capital test under this section by regulation.''; and

(B) in subsection (f), by striking ''the Secretary,'';

(6) in section 1364(c) (12 U.S.C. 4614(c)), by striking the last sentence;

(7) in section 1367(a)(2) (12 U.S.C. 4617(a)(2)), by striking ''with the written concurrence of the Secretary of the Treasury,'';

(8) by striking section 1383;

(9) by striking ''Committee on Banking, Finance and Urban Affairs'' and inserting ''Committee on Financial Services'' each place such term appears in sections 1319B, 1319G(c), 1328(a), 1336(b)(3)(C), 1337, and 1369(a)(3); and

(10) by striking ''Secretary'' and inserting ''Director'' each place such term appears in—

(A) subpart A of part 2 of subtitle A (except in sections 1322, 1324, and 1325); and

(B) subtitle B (except in section 1361(d)(1) and 1369E); and

(b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—The Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.) is amended—

(1) by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' each place such term appears, and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury'', in—

(A) section 303(c)(2) (12 U.S.C. 1718(c)(2));

(B) section 309(d)(3)(B) (12 U.S.C. 1723a(d)(3)(B)); and

(C) section 309(k)(1); and

(2) in section 309(n)—

(A) in paragraph (1), by inserting ''the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury,'' after ''Senate,''; and

(B) in paragraph (3)(B), by striking ''Secretary'' and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury''.

(c) AMENDMENTS TO FREDDIE MAC ACT.—The Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.) is amended—

(1) by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' each place such term appears, and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury'', in—

(A) section 303(b)(2) (12 U.S.C. 1452(b)(2));

(B) section 303(h)(2) (12 U.S.C. 1452(h)(2)); and

(C) section 307(c)(1) (12 U.S.C. 1456(c)(1));

(2) in section 306(i) (12 U.S.C. 1455(i))—

(A) by striking ''section 1316(c)'' and inserting ''section 306(c)''; and

(B) by striking ''section 106'' and inserting ''section 1316''; and

(3) in section 307 (12 U.S.C. 1456)—

(A) in subsection (f)—

(i) in paragraph (1), by inserting ''the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury,'' after ''Senate,''; and

(ii) in paragraph (3)(B), by striking ''Secretary'' and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury''.

(d) AMENDMENT TO TITLE 18, UNITED STATES CODE.—Section 1905 of title 18, United States Code, is amended by striking ''Office of Federal Housing Enterprise Oversight'' and inserting ''Office of Federal Enterprise Supervision of the Department of the Treasury''.

(e) AMENDMENTS TO FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(f)(3)(A) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury''.

(f) AMENDMENT TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT.—Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by striking subsection (d).

(g) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Section 5315 of title 5, United States Code, is amended by striking the item relating to the Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development and inserting the following new item:

''Director of the Office of Federal Enterprise Oversight, Department of the Treasury.''.

SEC. 172. EFFECTIVE DATE.

Except as specifically provided otherwise in this title, the amendments made by this title shall take effect on, and shall apply beginning on, the expiration of the 1-year period beginning on the date of enactment of this Act.

TITLE II—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

SEC. 201. ABOLISHMENT OF OFHEO.

(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of enactment of this Act, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.

(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of enactment of this Act, the Director of the Office of Federal Housing Enterprise Oversight shall, solely for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight—

(1) manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of any transfer of such employee pursuant to section 203; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

(c) STATUS OF EMPLOYEES AS FEDERAL AGENCY EMPLOYEES.—The amendments made by title I and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee of such Office as employees of an agency of the United States for purposes of any other provision of law during any time such employee is so employed.

(d) USE OF PROPERTY AND SERVICES.—

(1) PROPERTY.—The Director of the Office of Federal Enterprise Supervision of the Department of the Treasury may use the property of the Office of Federal Housing Enterprise Oversight to perform functions that have been transferred to the Director of the Office of Federal Enterprise Supervision for such time as is reasonable to facilitate the orderly transfer of functions under any other provision of this Act, or any amendment made by this Act to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which—

(A) arises under or pursuant to the title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.), the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), or any other provision of law applicable with respect to such Office; and

(B) existed on the day before the abolishment under subsection (a) of this section.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight shall abate by reason of the enactment of this Act, except that the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

SEC. 202. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

All regulations, orders, determinations, and resolutions that—

(1) were issued, made, prescribed, or allowed to become effective by—

(A) the Office of Federal Housing Enterprise Oversight;

(B) the Secretary of Housing and Urban Development and that relate to the Secretary's authority under—

(i) title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.);

(ii) under the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), with respect to the Federal National Mortgage Association; or

(iii) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.); or

(C) a court of competent jurisdiction and that relate to functions transferred by this Act; and

(2) are in effect on the date of the abolishment under section 201(a) of this Act,

shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury until modified, terminated, set aside, or superseded in accordance with applicable law by such Board, any court of competent jurisdiction, or operation of law.

SEC. 203. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.

(a) AUTHORITY TO TRANSFER.—The Director of the Office of Federal Enterprise Supervision of the Department of the Treasury may transfer employees of the Office of Federal Housing Enterprise Oversight to the Office of Federal Enterprise Supervision for employment no later than the date of the abolishment under section 201(a) of this Act, as the Director considers appropriate. This Act and the amendments made by this Act shall not be considered to result in the transfer of any function from one agency to another or the replacement of one agency by another, for purposes of section 3505 of title 5, United States Code, except to the extent that the Director of the Office of Federal Enterprise Supervision specifically provides so.

(b) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred.

(2) DECLINE OF TRANSFER.—The Director of the Office of Federal Enterprise Supervision of the Department of the Treasury may decline a transfer of authority under paragraph (1) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(c) REORGANIZATION.—If the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury determines, after the end of the 1-year period beginning on the date of the abolishment under section 201(a), that a reorganization of the combined work force is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(d) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury as a result of a transfer under subsection (a) may retain for 18 months after the date such transfer occurs membership in any employee benefit program of the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury or the Office of Federal Housing Enterprise Oversight, as applicable, including insurance, to which such employee belongs on the date of the abolishment under section 201(a) if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Office of Federal Enterprise Supervision.

(2) PAYMENT OF DIFFERENTIAL.—The difference in the costs between the benefits which would have been provided by such agency and those provided by this section shall be paid by the Director of the Office of Federal Enterprise Supervision. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or notice, without regard to any other regularly scheduled open season.

SEC. 204. TRANSFER OF PROPERTY AND FACILITIES.

Upon the abolishment under section 201(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury.

By Mr. COLEMAN:

S 1509. A bill to amend title 38, United States Code, to provide a gratuity to veterans, their spouses, and children who contract HIV or AIDS as a result of a blood transfusion relating to a service-connected disability, and for other purposes; to the Committee on Veterans' Affairs.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the text of the bill I introduce today, the Eric and Brian Simon Act of 2003, to provide compensation to veterans, their spouses, and children who contract HIV or AIDS as a result of a blood transfusion relating to a service-connected injury, be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1509

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Eric and Brian Simon Act of 2003''.

SEC. 2. GRATUITY FOR VETERANS AND DEPENDENTS WHO CONTRACT HIV OR AIDS FROM BLOOD TRANSFUSIONS RELATING TO SERVICE-CONNECTED DISABILITIES.

(a) IN GENERAL.—Subchapter IV of chapter 11 of title 38, United States Code, is amended by inserting after section 1137 the following new section:

''§ 1138. Gratuity for veterans and dependents who contract HIV or AIDS from blood transfusions relating to service-connected disabilities

''(a) IN GENERAL.—Except as provided in subsection (c), the Secretary shall pay a gratuity in the amount of $100,000 to each individual described in subsection (b) who has an HIV infection or is diagnosed with AIDS.

''(b) ELIGIBLE INDIVIDUALS.—An individual described in this subsection is any individual as follows:

''(1) A veteran who—

''(A) was treated with HIV contaminated blood transfusion, HIV contaminated blood components, HIV contaminated human tissue, or HIV contaminated organs (other than Anti-hemophiliac Factor) as a result of a service-connected disability; and

''(B) can assert through medical evidence acceptable to the Secretary reasonable certainty of transmission of HIV as a result of such treatment.

''(2) A lawful spouse, or former lawful spouse, of a veteran described in paragraph (1) after the time of treatment of such veteran as described in that paragraph who can assert through medical evidence acceptable to the Secretary reasonable certainty of transmission of HIV from such veteran.

''(3) Each natural child of a veteran described in paragraph (1) conceived after the time of treatment of such veteran as described in that paragraph who can assert through medical evidence acceptable to the Secretary reasonable certainty of perinatal transmission of HIV from such veteran.

''(c) EXCEPTION.—An individual described in subsection (b) is not entitled to the payment of a gratuity under subsection (a) if the individual has received a payment under section 102 of the Ricky Ray Hemophilia Relief Fund Act of 1998 (42 U.S.C. 300c–22 note) with respect to an HIV or AIDS infection.

''(d) ACCEPTABLE MEDICAL EVIDENCE.—(1) Except as provided in paragraph (2), medical evidence acceptable to the Secretary under subsection (b) shall include the following, as applicable:

''(A) Evidence of infection with HIV or AIDS.

''(B) In the case of a veteran described in subsection (b)(1), evidence of the treatment described in subsection (b)(1).

''(C) Evidence indicating no prior infection with HIV or AIDS before the treatment described in subsection (b)(1) that provided the source of infection with HIV or AIDS.

''(D) Evidence indicating that infection with HIV or AIDS occurred after the date of the treatment described in subsection (b)(1) that provided the source of infection with HIV or AIDS.

''(E) In the case of an individual described in paragraph (2) or (3) of subsection (b), evidence of transmission of HIV from a veteran described in paragraph (1) of that subsection.

''(F) Such other evidence as the Secretary may require.

''(2) The Secretary may waive an applicable requirement for any evidence specified in paragraph (1) if the Secretary determines that such evidence was destroyed or is otherwise unavailable as a result of circumstances beyond the control of the individual concerned.

''(e) PAYMENT FOR DECEASED INDIVIDUALS.—(1) If an individual entitled to a gratuity under this section is deceased at the time of payment, payment shall be made as follows:

''(A) In the case of an individual who is survived by a spouse living at the time of payment, to the surviving spouse.

''(B) In the case of an individual whose surviving spouse is not living at the time of payment, to the children of the individual living at the time of payment in equal shares.

''(C) In the case of an individual not described by paragraph (1) or (2), to the parents of the individual living at the time of payment in equal shares.

''(2) An individual described in paragraph (2) or (3) of subsection (b) who is entitled to a gratuity under subsection (a) is also entitled to payment under paragraph (1) with respect to a deceased individual.

''(3) In this subsection:

''(A) The term 'spouse', with respect to an individual described in paragraph (1), means the individual who was lawfully married to such individual at the time of death.

''(B) The term 'child' includes a recognized natural child, a stepchild who lived with such individual in a parent-child relationship, and an adopted child.

''(C) The term 'parent' includes fathers and moths through adoption.

''(f) APPLICATION.—(1) A person seeking payment of a gratuity under subsection (a) shall submit to the Secretary an application therefor in such form and containing such information as the Secretary shall require.

''(2) If an individual described in subsection (b) dies before submitting an application for a gratuity under subsection (a), an individual who would be entitled to payment under subsection (e) with respect to such deceased individual may submit an application for the gratuity under paragraph (1).

''(g) TREATMENT OF GRATUITY FOR INSURANCE PURPOSES.—(1) A payment under this section shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on the individual receiving the payment, or on the basis of such receipt, to repay any insurance carrier for insurance payments or to repay any person on account of worker's compensation payments.

''(2) A payment under this section shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

''(h) DEFINITIONS.—In this section:

''(1) The term 'AIDS' means acquired immune deficiency syndrome.

''(2) The term 'HIV' means human immunodeficiency virus.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 11 of that title is amended by inserting after the item relating to section 1137 the following new item:

''1138. Gratuity for veterans and dependents who contract HIV or AIDS from blood transfusions relating to service-connected disabilities.''.

By Mr. LEAHY (for himself, Mr. JEFFORDS, Mr. FEINGOLD, Mr. KENNEDY, Mr. KERRY, and Mr. DAYTON):

S. 1510. A bill to amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for resident in the United States, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Today I am introducing the Permanent Partners Immigration Act, a Senate companion to legislation that Representative NADLER of New York has introduced in the House for each of the last three Congresses. This legislation would allow U.S. citizens and legal permanent residents to petition for their foreign same-sex partners to come to the United States under our family immigration system. I am pleased to be joined in introducing this bill by Senators JEFFORDS, FEINGOLD, KENNEDY, and KERRY.

Under current law, committed partners of Americans are unable to use the family immigration system, which accounts for about 75 percent of the green cards and immigrant visas granted annually by the United States. As a result, gay Americans who are in this situation must live apart from their partners, or leave the country if they want to live legally and permanently with them.

This bill rectifies that situation, while retaining strong prohibitions against fraud. To qualify as a permanent partner, petitioners must prove that they are at least 18 and in a committed, intimate relationship with another adult in which both parties intend a lifelong commitment, and are financially interdependent with one's partner. They must also prove that they are not married to, or in a permanent partnership with, anyone other than that person, and are unable to contract with that person a marriage cognizable under the Immigration and Nationality Act. Proof could include sworn affidavits from friends and family and documentation of financial interdependence. Penalties for fraud would be the same as penalties for marriage fraud—up to five years in prison and $250,000 in fines for the U.S. citizen partner, and deportation for the alien partner.

There are Vermonters who are involved in permanent partnerships with foreign nationals and who have felt abandoned by our laws in this area. This bill would allow them—and other gay and lesbian Americans throughout our Nation who have come to feel that our immigration laws are discriminatory—to be a fuller part of our society.

The idea that immigration benefits should be extended to same-sex couples has become increasingly prevalent around the world. Indeed, fifteen nations Australia, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, South Africa, Sweden and the United Kingdom—recognize same-sex couples for immigration purposes.

Our immigration laws treat gays and lesbians in committed relationships as second-class citizens, and that needs to change. It is the right thing to do for the people involved, it is the sensible step to take in the interest of having a fair and consistent policy, and I hope that the Senate will act.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1510

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.

(a) SHORT TITLE.—This Act may be cited as the ''Permanent Partners Immigration Act of 2003''.

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided whenever in this Act an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act.

SEC. 2. DEFINITIONS.

Section 101(a) (8 U.S.C. 1101(a)) is amended—

(1) in paragraph (15)(K)(ii), by inserting ''or permanent partnership'' after ''marriage''; and

(2) by adding at the end the following:

''(51) The term 'permanent partner' means an individual 18 years of age or older who—

''(A) is in a committed, intimate relationship with another individual 18 years of age or older in which both parties intend a lifelong commitment;

''(B) is financially interdependent with that other individual;

''(C) is not married to or in a permanent partnership with anyone other than that other individual;

''(D) is unable to contract with that other individual a marriage cognizable under this Act; and

''(E) is not a first, second, or third degree blood relation of that other individual.

''(52) The term 'permanent partnership' means the relationship that exists between two permanent partners.''.

SEC. 3. WORLDWIDE LEVEL OF IMMIGRATION.

Section 201(b)(2)(A)(i) (8 U.S.C. 1151(b)(2)(A)(i)) is amended—

(1) by inserting ''permanent partners,'' after ''spouses,'';

(2) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(3) by striking ''remarries.'' and inserting ''remarries or enters a permanent partnership with another person.''.

SEC. 4. NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.

(a) PER COUNTRY LEVELS.—Section 202(a)(4) (8 U.S.C. 1152(a)(4)) is amended—

(1) in the heading, by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES'';

(2) in subparagraph (A), in the heading by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES''; and

(3) in subparagraph (C), in the heading by inserting ''WITHOUT PERMANENT PARTNERS'' after ''DAUGHTERS''.

(b) RULES FOR CHARGEABILITY.—Section 202(b)(2) (8 U.S.C. 1152(b)(2)) is amended—

(1) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(2) by inserting ''or permanent partners'' after ''husband and wife''.

SEC. 5. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR FAMILY MEMBERS OF PERMANENT RESIDENT ALIENS.—Section 203(a)(2) (8 U.S.C. 1153(a)(2)) is amended—

(1) in the heading—

(A) by striking ''and'' after ''SPOUSES'' and inserting '', PERMANENT PARTNERS,''; and

(B) by inserting ''WITHOUT PERMANENT PARTNERS'' after ''SONS'' and after ''DAUGHTERS''; and

(2) in subparagraph (A)—

(A) by inserting '', permanent partners,'' after ''spouses''; and

(B) by inserting ''without permanent partners'' after ''sons'' and after ''daughters''.

(b) PREFERENCE ALLOCATION FOR SONS AND DAUGHTERS OF CITIZENS.—Section 203(a)(3) (8 U.S.C. 1153(a)(3)) is amended—

(1) in the heading, by inserting ''AND DAUGHTERS AND SONS WITH PERMANENT PARTNERS'' after ''DAUGHTERS''; and

(2) by inserting ''or daughters or sons with permanent partners'' after ''daughters''.

(c) EMPLOYMENT CREATION.—Section 203(b)(5)(A)(ii) (8 U.S.C. 1153(b)(5)(A)(ii)) is

amended by inserting ''permanent partner,'' after ''spouse,''.

(d) TREATMENT OF FAMILY MEMBERS.—Section 203(d) (8 U.S.C. 1153(d)) is amended by inserting '', permanent partner,'' after ''spouse'' each place such term appears.

SEC. 6. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

(a) CLASSIFICATION PETITIONS.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended—

(1) in subparagraph (A)(ii), by inserting ''or permanent partner'' after ''spouse'';

(2) in subparagraph (A)(iii)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(B) in subclause (I), by inserting ''or permanent partnership'' after ''marriage'' each place such term appears; and

(3) in subparagraph (B)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(B) by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

(b) IMMIGRATION FRAUD PREVENTION.—Section 204(c) (8 U.S.C. 1154(c)) is amended—

(1) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(2) by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

SEC. 7. ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES.

Section 207(c) (8 U.S.C. 1157(c)) is amended—

(1) in paragraph (2)—

(A) by inserting '', permanent partner,'' after ''spouse'' each place such term appears; and

(B) by inserting '', permanent partner's,'' after ''spouse's''; and

(2) in paragraph (4), by inserting '', permanent partner,'' after ''spouse''.

SEC. 8. ASYLUM.

Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended—

(1) in the heading, by inserting ''OR PERMANENT PARTNER'' after ''SPOUSE''; and

(2) in subparagraph (A), by inserting '', permanent partner,'' after ''spouse''.

SEC. 9. ADJUSTMENT OF STATUS OF REFUGEES.

Section 209(b)(3) (8 U.S.C. 1159(b)(3)) is amended by inserting '', permanent partner,'' after ''spouse''.

SEC. 10. INADMISSIBLE ALIENS.

(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Section 212(a) (8 U.S.C. 1182(a)) is amended—

(1) in paragraph (3)(D)(iv), by inserting ''permanent partner,'' after ''spouse,'' each place such term appears;

(2) in paragraph (4)(C)(i)(I), by inserting '', permanent partner,'' after ''spouse'';

(3) in paragraph (6)(E)(ii), by inserting ''permanent partner,'' after ''spouse,'' each place such term appears; and

(4) in paragraph (9)(B)(v), by inserting '', permanent partner,'' after ''spouse'' each place such term appears.

(b) WAIVERS.—Section 212(d) (8 U.S.C. 1182(d)) is amended—

(1) in paragraph (11), by inserting ''permanent partner,'' after ''spouse,''; and

(2) in paragraph (12), by inserting '', permanent partner,'' after ''spouse''.

(c) WAIVERS OF INADMISSIBILITY ON HEALTH-RELATED GROUNDS.—Section 212(g)(1)(A) (8 U.S.C. 1182(g)(1)(A)) is amended by inserting '', permanent partner,'' after ''spouse''.

(d) WAIVERS OF INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS.—Section 212(h)(1)(B) (8 U.S.C. 1182(h)(1)(B)) is amended by inserting ''permanent partner,'' after ''spouse,'' each place such term appears.

(e) WAIVER OF INADMISSIBILITY FOR MISREPRESENTATION.—Section 212(i)(1) (8 U.S.C. 1182(i)(1)) is amended—

(1) by inserting ''permanent partner,'' after ''spouse,''; and

(2) by inserting '', permanent partner,'' after ''resident spouse''.

SEC. 11. NONIMMIGRANT STATUS FOR PERMANENT PARTNERS AWAITING THE AVAILABILITY OF AN IMMIGRANT VISA.

Section 214 (8 U.S.C. 1184) is amended—

(1) by redesignating subsections (o) and (p) as added by sections 1102(b) and 1103(b), respectively, of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, as enacted into law by section 1(a)(2) of P.L. 106–553, as subsections (p) and (q), respectively; and

(2) in subsection (q) (as so redesignated)—

(A) in paragraph (1), by inserting ''or permanent partner'' after ''spouse''; and

(B) in paragraph (2), by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

SEC. 12. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES, PERMANENT PARTNERS, AND SONS AND DAUGHTERS.

(a) SECTION HEADING.—

(1) IN GENERAL.—The section heading for section 216 (8 U.S.C. 1186a) is amended by inserting ''AND PERMANENT PARTNERS'' after ''SPOUSES''.

(2) CLERICAL AMENDMENT.—The table of contents is amended by amending the item relating to section 216 to read as follows:

''Sec. 216. Conditional permanent resident status for certain alien spouses and permanent partners and sons and daughters.''.

(b) IN GENERAL.—Section 216(a) (8 U.S.C. 1186a(a)) is amended—

(1) in paragraph (1), by inserting ''or permanent partner'' after ''spouse'';

(2) in paragraph (2)(A), by inserting ''or permanent partner'' after ''spouse'';

(3) in paragraph (2)(B), by inserting ''permanent partner,'' after ''spouse,''; and

(4) in paragraph (2)(C), by inserting ''permanent partner,'' after ''spouse,''.

(c) TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER.—Section 216(b) (8 U.S.C. 1186a(b)) is amended—

(1) in the heading, by inserting ''OR PERMANENT PARTNERSHIP'' after ''MARRIAGE'';

(2) in paragraph (1)(A), by inserting ''or permanent partnership'' after ''marriage''; and

(3) in paragraph (1)(A)(ii)—

(A) by inserting ''or has ceased to satisfy the criteria for being considered a permanent partnership under this Act,'' after ''terminated,''; and

(B) by inserting ''or permanent partner'' after ''spouse''.

(d) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—Section 216(c) (8 U.S.C. 1186a(c)) is amended—

(1) in paragraphs (1), (2)(A)(ii), (3)(A)(ii), (3)(C), (4)(B), and (4)(C), by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(2) in paragraph (3)(A), in the matter following clause (ii), and in paragraphs (3)(D), (4)(B), and (4)(C), by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

(e) CONTENTS OF PETITION.—Section 216(d)(1) (8 U.S.C. 1186a(d)(1)) is amended—

(1) in subparagraph (A)—

(A) in the heading, by inserting ''OR PERMANENT PARTNERSHIP'' after ''MARRIAGE'';

(B) in clause (i)—

(i) in the matter preceding subclause (I), by inserting ''or permanent partnership'' after ''marriage'';

(ii) in subclause (I), by inserting before the comma at the end '', or is a permanent partnership recognized under this Act''; and

(iii) in subclause (II)—

(I) by inserting ''or has not ceased to satisfy the criteria for being considered a permanent partnership under this Act,'' after ''terminated,''; and

(II) by inserting ''or permanent partner'' after ''spouse''; and

(C) in clause (ii), by inserting ''or permanent partner'' after ''spouse''; and

(2) in subparagraph (B)(i)—

(A) by inserting ''or permanent partnership'' after ''marriage''; and

(B) by inserting ''or permanent partner'' after ''spouse''.

(e) DEFINITIONS.—Section 216(g) (8 U.S.C. 1186a(g)) is amended—

(1) in paragraph (1)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(B) by inserting ''or permanent partnership'' after ''marriage'' each place such term appears;

(2) in paragraph (2), by inserting ''or permanent partnership'' after ''marriage'';

(3) in paragraph (3), by inserting ''or permanent partnership'' after ''marriage''; and

(4) in paragraph (4)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(B) by inserting ''or permanent partnership'' after ''marriage''.

SEC. 13. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, PERMANENT PARTNERS, AND CHILDREN.

(a) SECTION HEADING.—

(1) IN GENERAL.—Section 216A (8 U.S.C. 1186b) is amended in the heading by inserting ''OR PERMANENT PARTNERS'' after ''SPOUSES''.

(2) CLERICAL AMENDMENT.—The table of contents is amended by amending the item relating to section 216A to read as follows:

''Sec. 216. Conditional permanent resident status for certain alien entrepreneurs, spouses or permanent partners, and children.''.

(b) IN GENERAL.—Section 216A(a) (8 U.S.C. 1186b(a)) is amended, in paragraphs (1), (2)(A), (2)(B), and (2)(C), by inserting ''or permanent partner'' after ''spouse'' each place such term appears.

(c) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—Section 216A(b)(1) (8 U.S.C. 1186b(b)(1)) is amended in the matter following subparagraph (C), by inserting ''or permanent partner'' after ''spouse''.

(d) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—Section 216A(c) (8 U.S.C. 1186b(c)) is amended, in paragraphs (1), (2)(A)(ii), and (3)(C), by inserting ''or permanent partner'' after ''spouse''.

(e) DEFINITIONS.—Section 216A(f)(2) (8 U.S.C. 1186b(f)(2)) is amended by inserting ''or permanent partner'' after ''spouse'' each place such term appears.

SEC. 14. DEPORTABLE ALIENS.

(a) IN GENERAL.—Section 237(a) (8 U.S.C. 1227(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D)(i), by inserting ''or permanent partners'' after ''spouses'' each place such term appears;

(B) in subparagraph (E)—

(i) in clause (ii), by inserting ''or permanent partner'' after ''spouse''; and

(ii) in clause (iii), by inserting ''or permanent partner'' after ''spouse'';

(C) in subparagraph (H)(i)(I), by inserting ''or permanent partner'' after ''spouse''; and

(D) by adding at the end the following:

''(I) PERMANENT PARTNERSHIP FRAUD.—An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if—

''(i) the alien obtains any admission to the United States with an immigrant visa or other documentation procured on the basis of a permanent partnership entered into less than 2 years prior to such admission and which, within 2 years subsequent to such admission, is terminated because the criteria for permanent partnership are no longer fulfilled, unless the alien establishes to the satisfaction of the Secretary of Homeland Security that such permanent partnership was not contracted for the purpose of evading any provisions of the immigration laws; or

''(ii) it appears to the satisfaction of the Secretary of Homeland Security that the alien has failed or refused to fulfill the alien's permanent partnership which in the opinion of the Secretary of Homeland Security was made for the purpose of procuring the alien's admission as an immigrant.'';

(2) in paragraph (2)(E)(i), by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(3) in paragraph (3)(C)(ii), by inserting ''or permanent partner'' after ''spouse'' each place such term appears.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 237(a) (8 U.S.C. 1227(a)) is amended by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''.

SEC. 15. REMOVAL PROCEEDINGS.

Section 240(e)(1) (8 U.S.C. 1229a(e)(1)) is amended by inserting ''permanent partner,'' after ''spouse,''.

SEC. 16. CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS.

Section 240A(b) (8 U.S.C. 1229b(b)) is amended—

(1) in paragraph (1)(D), by inserting ''permanent partner,'' after ''spouse,''; and

(2) in paragraph (2)—

(A) in the heading, by inserting '', PERMANENT PARTNER,'' after ''SPOUSE''; and

(B) in subparagraph (A), by inserting '', permanent partner,'' after ''spouse'' each place such term appears.

SEC. 17. ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE.

(a) PROHIBITION ON ADJUSTMENT OF STATUS.—Section 245(d) (8 U.S.C. 1255(d)) is amended by inserting ''or permanent partnership'' after ''marriage''.

(b) AVOIDING IMMIGRATION FRAUD.—Section 245(e) (8 U.S.C. 1255(e)) is amended—

(1) in paragraph (1), by inserting ''or permanent partnership'' after ''marriage''; and

(2) by adding at the end the following:

''(4) Paragraph (1) and section 204(g) shall not apply with respect to a permanent partnership if the alien establishes by clear and convincing evidence to the satisfaction of the Secretary of Homeland Security that the permanent partnership was entered into in good faith and in accordance with section 101(a)(51) and the permanent partnership was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien permanent partner. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.''.

(c) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS PAYING FEE.—Section 245(i)(1)(B) (8 U.S.C. 1255(i)(1)(B)) is amended by inserting '', permanent partner,'' after ''spouse''.

(d) INFORMANTS.—Section 245(j) (8 U.S.C. 1255(j)) is amended by inserting ''permanent partner,'' after ''spouse,'' each place such term appears.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—Section 245 (8 U.S.C. 1255) is amended by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''.

SEC. 18. MISREPRESENTATION AND CONCEALMENT OF FACTS.

Section 275(c) (8 U.S.C. 1325(c)) is amended by inserting ''or permanent partnership'' after ''marriage''.

SEC. 19. REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION.

Section 316(b) (8 U.S.C. 1427(b)) is amended, in the matter following paragraph (2), by inserting ''or permanent partner'' after ''spouse''.

SEC. 20. FORMER CITIZENS OF UNITED STATES REGAINING UNITED STATES CITIZENSHIP.

Section 324(a) (8 U.S.C. 1435(a)) is amended, in the matter following ''after September 22, 1922,'', by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

SEC. 21. APPLICATION OF FAMILY UNITY PROVISIONS TO PERMANENT PARTNERS OF CERTAIN LIFE ACT BENEFICIARIES.

Section 1504 of division B of the Miscellaneous Appropriations Act, 2001, as enacted into law by section 1(a)(4) of Public Law 106–554, is amended—

(1) in the section heading, by inserting '', **PERMANENT PARTNERS,**'' after ''**SPOUSES**'';

(2) in subsection (a), by inserting '', permanent partner,'' after ''spouse''; and

(3) in each of subsections (b) and (c)—

(A) in the subsection headings, by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES''; and

(B) by inserting '', permanent partner,'' after ''spouse'' each place such term appears.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator LEAHY in the introduction of the Permanent Partners Immigration Act, to address the injustice in our immigration law on gay and lesbian couples.

The reunification of families is one of the cornerstones of our immigration policy. The American Dream is about opportunity and it is about family life as well. When one member of a family comes to the United States alone, we try to make it possible for their spouse, children, and siblings to join them in the future.

Every year, our immigration policy reunites literally hundreds of thousands of families. In 2002, almost 400,000 immigrants came to the United States to join spouses who are citizens or legal permanent residents. Thousands more siblings and children joined mothers, fathers, brothers and sisters.

Shamefully, though, our current law left thousands of other families permanently divided. Because of their sexual orientation, lesbian and gay couples are kept apart, or forced to stay together illegally, with one partner in constant fear of deportation. They are denied the half of the American Dream that we offer to other citizens and immigrants.

Our bill will remedy this injustice. It gives the same-sex permanent partners of citizens and permanent residents the opportunity to join their loved ones in our country. They must meet strict standards of eligibility, like those applied to spouses. To gain entrance, they must prove that they are financially interdependent with their partners in the United States and that they are in a lifelong relationship.

Most of our major allies and trading partners already grant immigration benefits to same-sex couples. Now, by bringing family reunification to all of our citizens and residents, our bill recognizes the common humanity of gay and lesbian Americans. It is time for Congress to act on this issue, and I urge my colleagues to support this important step in making our immigration laws fairer.

By Mr. KYL (for himself and Mr. MCCAIN):

S. 1511. A bill to designate the Department of Veterans Affairs Medical Center in Prescott, Arizona, as the ''Bob Stump Department of Veterans Affairs Medical Center''; to the Committee on Veterans' Affairs.

Mr. KYL. Mr. President, today Senator MCCAIN and I are introducing legislation to rename the VA Medical Center in Prescott, AZ. to honor our colleague Bob Stump, who died on June 20. This legislation was introduced by Congressman JIM KOLBE and the other seven Arizona House Members on July 21.

I had the pleasure of serving with Bob Stump in the House of Representatives in the late 1980s and early 1900s. He was a fine man, and a great public servant. A patriot and a hard-working legislator, he did not seek headlines or glory, preferring to work quietly, without fanfare, on behalf of Arizona's interests—and the Nation's.

For Bob Stump, actions were louder than words. He didn't say much, but you always knew where he stood.

Before coming to Congress, Bob served in both houses of the Arizona legislature from 1959 to 1976—that final year as president of the Arizona State Senate. His congressional tenure culminated in his six years as Chairman of the House Committee on Veterans' Affairs, a perch from which he improved the lives of his fellow veterans in innumerable ways. As Chairman of the House Armed Services Committee for two years, he helped to ensure America's military readiness by advocating tirelessly for better U.S. military technology and protecting the important work underway at Arizona's military bases.

Bob's concern for the military, of course, was personnel. When he entered the Navy to serve his country in time of war, he was all of 16 years old. He spent three years, 1943 to 1946, as a medic on the U.S.S. *Tulagi.* He was determined to protect Arlington National Cemetery and to see to it that a World War II memorial was approved for construction on the Mall here in Washington.

Bob Stump's work to promote the welfare of current and past members of the Armed Services is well-known to Arizona's veterans. By naming the Prescott VA Health Center in his honor, we will ensure that his exemplary character and contributions are remembered by all those who pass through its doors in the future.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1511

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BOB STUMP DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, PRESCOTT, ARIZONA.

(a) DESIGNATION.—The Department of Veterans Affairs Medical Center located in Prescott, Arizona, is hereby designated as the ''Bob Stump Department of Veterans Affairs Medical Center''.

(b) REFERENCES.—Any reference to such medical center in any law, regulation, map, document, or other paper of the United States shall be considered to be a reference to the Bob Stump Department of Veterans Affairs Medical Center.

Mr. MCCAIN. Mr. President, I am proud to join Senator KYL in introducing legislation that would rename the Veterans Administration medical center in Prescott, AZ after Bob Stump.

In June of this year, Arizonans suffered a major loss with the passing of Bob Stump, a native son who made his mark for our State and our Nation. Congressman Stump had a patriot's devotion to those who served our country in uniform. He will be deeply missed by his friends, family and a grateful Nation.

Congressman Stump served his country and the residents of Arizona admirably in the United States Navy, during World War II; in the Arizona State legislature; and in the United States Congress.

Congressman Stump's service in the House of Representatives was marked by this dedication to his constituents in Arizona. Never one for the trappings of a political office, Bob read and responded to all of his mail, he never had Press Secretary and often answered the office phone personally.

One could not overlook his leadership in Defense and Veterans issues. Serving as Chairman of the Veterans Affairs Committee, his work has so beneficial to America's veterans that a street in Arlington National Cemetery was named after him. Everywhere I travel, veterans remark to me that Bob Stump put Veterans needs first.

Bob's strong leadership of the House Armed Services Committee helped usher in many of the technological advances that characterize our modern military.

This legislation serves as a memorial to a member of Congress who left an indelible legacy.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 1512. A bill to amend the Internal Revenue Code of 1986 to exclude from income and employment taxes and wage withholding property tax rebates and other benefits provided to volunteer firefighters and emergency medical responders; to the Committee on Finance.

Mr. DODD. Mr. President. I am pleased to rise today with my colleague Senator LIEBERMAN to introduce legislation that would amend the Internal Revenue Code to exclude property tax abatements, provided by local governments to volunteer firefighters and emergency medical responders, from the definition of income and wages. Congressman JOHN LARSON of Connecticut introduced identical legislation in the House.

Seventy-five percent of firefighters in our country are volunteers. Unfortunately, statistics show that the number of volunteer firefighters and emergency responders have been declining in past years at an alarming rate. The number of volunteer firefighters around the country has declined by 5 to 10 percent since 1983, while the number of emergency calls made has sharply increased.

Many municipalities throughout the country, including the State of Connecticut, offer stipends and property tax abatements of up to $1,000 per year to volunteer firefighters, emergency medical technicians, paramedics, and ambulance drivers. These incentives have helped local fire departments in their volunteer recruitment efforts throughout the country.

Last year the IRS ruled that property tax abatements to volunteers should be treated as wages and income. This ruling would undermine the efforts of localities across the country to recruit more volunteer firefighters.

The bill that Senator LIEBERMAN and I are introducing amends the Internal Revenue Code to exclude property tax abatements and stipends for volunteer firefighters and emergency medical responders from the definition of income and wages. This bill would allow local governments around the country to continue providing these incentives to their volunteer firefighters and emergency medical responders.

The President has recently called for Americans to volunteer in their communities. When both heads of household hold full-time employment, it is often too difficult for them to take time away from their families without some form of compensation. A $1,000 property tax break is not a large request for the great service these men and women provide to our communities. They risk their lives for others. The least we can do is allow States and towns to offer them modest incentives to serve.

The IRS ruling undermines the good intentions and creative efforts of many localities. If our municipalities are willing to forgo their local tax revenues in order to ensure they have enough volunteer firefighters and emergency service providers to protect their communities, and if members of the community are doing their part by volunteering, then we, as a country should do our part and support local efforts to ensure that all our communities have adequate protection. And that is what our bill will ensure.

I hope that our colleagues will join us in supporting this legislation so that we can ensure that state and local governments have the flexibility to design and implement recruiting and retention programs that benefit not only the volunteer firefighters and emergency medical providers, but also the communities they protect.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows

S. 1512

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSION FROM INCOME AND EMPLOYMENT TAXES AND WAGE WITHHOLDING FOR PROPERTY TAX REBATES AND OTHER BENEFITS PROVIDED TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL RESPONDERS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 140 as section 140A and by inserting after section 139 the following new section:

''SEC. 140. PROPERTY TAX REBATES AND OTHER BENEFITS PROVIDED TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL RESPONDERS.

''(a) EXCLUSION.—Gross income shall not include a qualified property tax rebate or other benefit.

''(b) QUALIFIED PROPERTY TAX REBATE OR OTHER BENEFIT.—For purposes of subsection (a)—

''(1) IN GENERAL.—The term 'qualified property tax rebate or other benefit' means a rebate of real or personal property taxes, or any other benefit, provided by a State or political subdivision on account of services performed as a member of a qualified volunteer emergency response organization.

''(2) QUALIFIED VOLUNTEER EMERGENCY RESPONSE ORGANIZATION.—The term 'qualified volunteer emergency response organization' means any volunteer organization—

''(A) which is organized and operated to provide firefighting or emergency medical services for persons in the State or political subdivision, as the case may be, and

''(B) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.''.

(2) CLERICAL AMENDMENT.—The table of sections for such part is amended by striking the last item and inserting the following new items:

''Sec. 140. Property tax rebates and other benefits provided to volunteer firefighters and emergency medical responders.

''Sec. 140A. Cross references to other Acts.''.

(b) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) of the Internal Revenue Code of 1986 (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ''; or'', and by inserting after paragraph (21) the following new paragraph:

''(22) any qualified property tax rebate or other benefit (as defined in section 140(b)).''.

(B) Section 209(a) of the Social Security Act is amended by striking ''or'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ''; or'', and by inserting after paragraph (18) the following new paragraph:

''(19) Any qualified property tax rebate or other benefit (as defined in section 140(b) of the Internal Revenue Code of 1986).''.

(2) UNEMPLOYMENT TAXES.—Section 3306(b) of the Internal Revenue Code of 1986 (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting ''; or'', and by inserting after paragraph (17) the following new paragraph:

''(18) any qualified property tax rebate or other benefit (as defined in section 140(b).''.

(3) WAGE WITHHOLDING.—Section 3401(a) of such Code (defining wages) is amended by striking ''or'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ''; or'', and by inserting after paragraph (21) the following new paragraph:

''(22) for any qualified property tax rebate or other benefit (as defined in section 140(b).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

By Mrs. HUTCHISON:

S. 1514. A bill to amend the Internal Revenue code of 1986 to reform certain excise taxes applicable to private foundations, and for other purposes; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce legislation to address concerns regarding the operation of charitable foundations.

Well-publicized incidents of abuse by a few foundations have raised legitimate concerns about whether these entities are properly focusing resources on their philanthropic missions. In come cases, excessive amounts have gone toward administrative costs, high executive salaries and expensive travel.

My bill will help to ensure that more money is spent on charitable activities and that those who abuse the system are properly punished.

One proposal I support is included in the House version of the CARE Act, H.R. 7, the Charitable Giving Act of 1003. It would reduce the excise tax on investment income for foundations from two percent to one percent, allowing foundations to keep more money so they can direct it to those in need.

However, we must ensure this money actually goes toward the charitable activities for which it is intended. The House bill tries to do this by preventing any administrative costs from being counted as part of the five percent annual distribution requirement foundations must meet. While the legislation moves in the right direction, the language is too broad and may inadvertently punish some foundations that are acting responsibly.

Many foundations will find it difficult to earn the returns necessary to maintain their underlying endowments and cover the five percent requirement in addition to all administrative costs. This could lead to a diminished ability to fulfill their missions over time, as underlying endowments are eroded as an unintended consequence. Some foundations may try to meet this challenge by reducing important, legitimate spending such as on legal compliance.

The legislation I am introducing will better address these issues. First, I agree we should reduce the excise tax on foundations from two percent to one percent. I also agree we should consider limiting which administrative expenses are counted as distributions. However, I propose doing so in a more defined manner.

My bill would exclude general overhead expenses, management salaries and excessive travel expenses from being counted as distributions. It will allow expenses directly attributable to administering grants and direct charitable giving, as well as expenses related to maintaining legal compliance, to continue to be included.

By focusing these restrictions on the expenses which tend to be the source of abuse, we can deal with the root issues while minimizing unintended consequences.

My bill also goes further than other proposals in penalizing wrongdoers. It will raise the penalty for those who abuse the system by ''self-dealing'' from a five percent to a 25 percent excise tax on the amounts involved.

My bill will lower the net investment tax, tighten the regulations allowing administrative expenses to be counted as distributions, and increase penalties for those abusing the system. It does so with drastic measures that could lead to a decline in foundations in the long-term. Together these measures will instill more discipline on the foundation community and result in more money going to worthy causes.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1514

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Philanthropy Expansion and Responsibility Act of 2003''.

(b) AMENDMENT OF 1986 CODE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repel of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. REFORM OF CERTAIN EXCISE TAXES RELATED TO PRIVATE FOUNDATIONS.

(a) REDUCTION OF TAX ON NET INVESTMENT INCOME.—Section 4940(a) (relating to tax-exempt foundations) is amended by striking ''2 percent'' and inserting ''1 percent''.

(b) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—Section 4940 (relating to excise tax based on investment income) is amended by striking subsection (e).

(c) MODIFICATION OF EXCISE TAX ON SELF-DEALING.—The second sentence of section 4941(a)(1) (relating to initial excise tax imposed on self-dealer) is amended by striking ''5 percent'' and inserting ''25 percent''.

(d) MODIFICATION OF EXCISE TAX ON FAILURE TO DISTRIBUTE INCOME.—

(1) CERTAIN ADMINISTRATIVE EXPENSES NOT TREATED AS DISTRIBUTIONS.—

(A) IN GENERAL.—Section 4942(g)(1)(A) (defining qualifying distributions) is amended by striking ''(including that portion of reasonable and necessary administrative expenses)'' and inserting ''(including that portion of reasonable and necessary administrative expenses which are directly attributable to direct charitable activities, grant selection activities, grant monitoring and administration activities, compliance with applicable Federal, State, or local law, or furthering public accountability of the private foundation, except as provided in paragraph (4))''.

(B) LIMITATIONS.—Section 4942(g) is amended by striking paragraph (4) and inserting the following new paragraphs:

''(4) LIMITATION ON ADMINISTRATIVE EXPENSES TREATED AS DISTRIBUTIONS.—For purposes of paragraph (1)(A), the following administrative expenses shall not be treated as qualifying distributions:

''(A) Any compensation paid to persons who are considered disqualified persons.

''(B) Any traveling expenses incurred for travel outside the United States.

''(C) Any traveling expenses incurred for transportation by air solely from one point in the United States to another point in the United States via first-class transportation on a commercial aircraft or via a private aircraft.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of paragraphs (1) and (4). Such regulations shall provide that administrative expenses which are excluded from qualifying distributions solely by reason of the limitations in paragraph (1) or (4) shall not subject a private foundation to any other excise taxes imposed by this subchapter.''.

(2) DISALLOWANCE NOT TO APPLY TO CERTAIN PRIVATE FOUNDATIONS.—

(A) IN GENERAL.—Section 4942(j)(3) (defining operating foundation) is amended—

(i) by striking ''(within the meaning of paragraph (1) or (2) of subsection (g))'' each place it appears, and

(ii) by adding at the end the following new sentence: ''For purposes of this paragraph, the term 'qualifying distributions' means qualifying distributions within the meaning of paragraph (1) or (2) of subsection (g) (determined without regard to subsection (g)(4)).''.

(B) CONFORMING AMENDMENT.—Section 4942(f)(2)(C)(i) is amended by inserting ''(determined without regard to subsection (g)(4))'' after ''within the meaning of subsection (g)(1)(A)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

By Mr. GREGG:

S. 1515. A bill to establish and strengthen postsecondary programs and courses in the subjects of traditional American history, free institutions, and Western civilization, available to students preparing to teach

these subjects, and to other students; to the Committee on Health, Education, Labor, and Pensions.

Mr. GREGG. Mr. President, today I am proud to introduce the Higher Education for Freedom Act. This bill will establish a competitive grant program making funds available to institutions of higher education, centers within such institutions, and associated nonprofit foundations to promote programs focused on the teaching and study of traditional American history and government, and the history and achievements of Western Civilization, at both the graduate and undergraduate level, including those that serve students enrolled in K–12 teacher education programs.

Today, more than ever, it is important to preserve and defend our common heritage of freedom and civilization, and to ensure that future generations of Americans understand the importance of traditional American history and the principles of free government on which this Nation was founded. This basic knowledge is not on essential to the full participation of our citizenry in America's civic life, but also to the continued success of the American experiment in self-government, binding together a diverse people into a single Nation with common purposes.

However, college students' lack of historical literacy is quite startling, and too few of today's colleges and universities are focused on the task of imparting this crucial knowledge to the next generation. One survey of students at America's top colleges reported that seniors could not identify Valley Forge, words from the Gettysburg Address, or even the basic principles of the U.S. Constitution. Given high-school level American history questions, 81 percent of the seniors would have received a D or F, the report found.

One college professor even informed me that her students did not know which side Lee was on during the Civil War, or whether the Russians were allies or enemies in World War II. A student of hers even asked why anyone should care what the Founding Fathers wrote.

Thomas Jefferson once wrote, ''If a nation expects to be ignorant—and free—in a state of civilization, it expects what never was and never will be.'' I believe the time has come for Congress to do something to promote the teaching of traditional American history at the postsecondary level, and I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1515

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Higher Education for Freedom Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Given the increased threat to American ideals in the trying times in which we live, it is important to preserve and defend our common heritage of freedom and civilization and to ensure that future generations of Americans understand the importance of traditional American history and the principles of free government on which this Nation was founded in order to provide the basic knowledge that is essential to full and informed participation in civic life and to the larger vibrancy of the American experiment in self-government, binding together a diverse people into a single Nation with a common purpose.

(2) However, despite its importance, most of the Nation's colleges and universities no longer require United States history or systematic study of Western civilization and free institutions as a prerequisite to graduation.

(3) In addition, too many of our Nation's elementary and secondary school history teachers lack the training necessary to effectively teach these subjects, due largely to the inadequacy of their teacher preparation.

(4) Distinguished historians and intellectuals fear that without a common civic memory and a common understanding of the remarkable individuals, events, and ideals that have shaped our Nation and its free institutions, the people in the United States risk losing much of what it means to be an American, as well as the ability to fulfill the fundamental responsibilities of citizens in a democracy.

(b) PURPOSES.—The purposes of this Act are to promote and sustain postsecondary academic centers, institutes, and programs that offer undergraduate and graduate courses, support research, and develop teaching materials, for the purpose of developing and imparting a knowledge of traditional American history, the American Founding, and the history and nature of, and threats to, free institutions, or of the nature, history and achievements of Western Civilization, particularly for—

(1) undergraduate students who are enrolled in teacher education programs, who may consider becoming school teachers, or who wish to enhance their civic competence;

(2) elementary, middle, and secondary school teachers in need of additional training in order to effectively teach in these subject areas; and

(3) graduate students and postsecondary faculty who wish to teach about these subject areas with greater knowledge and effectiveness.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ELIGIBLE INSTITUTION.—The term ''eligible institution'' means—

(A) an institution of higher education;

(B) a specific program within an institution of higher education; and

(C) a non-profit history or academic organization associated with higher education whose mission is consistent with the purposes of this Act.

(2) FREE INSTITUTION.—The term ''free institution'' means an institution that emerged out of Western Civilization, such as democracy, individual rights, market economics, religious freedom and tolerance, and freedom of thought and inquiry.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the same meaning given that term under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(5) TRADITIONAL AMERICAN HISTORY.—The term ''traditional American history'' means—

(A) the significant constitutional, political, intellectual, economic, and foreign policy trends and issues that have shaped the course of American history; and

(B) the key episodes, turning points, and leading figures involved in the constitutional, political, intellectual, diplomatic, and economic history of the United States.

SEC. 4. GRANTS TO ELIGIBLE INSTITUTIONS.

(a) IN GENERAL.—From amounts appropriated to carry out this Act, the Secretary shall award grants, on a competitive basis, to eligible institutions, which grants shall be used for—

(1) history teacher preparation initiatives, that—

(A) stress content mastery in traditional American history and the principals on which the American political system is based, including the history and philosophy of free institutions, and the study of Western civilization; and

(B) provide for grantees to carry out research, planning, and coordination activities devoted to the purposes of this Act; and

(2) strengthening postsecondary programs in fields related to the American founding, free institutions, and Western civilization, particularly through—

(A) the design and implementation of courses, lecture series and symposia, the development and publication of instructional materials, and the development of new, and supporting of existing, academic centers;

(B) research supporting the development of relevant course materials;

(C) the support of faculty teaching in undergraduate and graduate programs; and

(D) the support of graduate and postgraduate fellowships and courses for scholars related to such fields.

(b) SELECTION CRITERIA.—In selecting eligible institutions for grants under this section for any fiscal year, the Secretary shall establish criteria by regulation, which shall, at a minimum, consider the education value and relevance of the institution's programming to carrying out the purposes of this Act and the expertise of key personnel in the area of traditional American history and the principals on which the American political system is based, including the political and intellectual history and philosophy of free institutions, the American Founding, and other key events that have contributed to American freedom and the study of Western civilization.

(c) GRANT APPLICATION.—An eligible institution that desires to receive a grant under this Act shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may prescribe by regulation.

(d) GRANT REVIEW.—The Secretary shall establish procedures for reviewing and evaluating grants made under this Act.

(e) GRANT AWARDS.—

(1) MAXIMUM AND MINIMUM GRANTS.—The Secretary shall award each grant under this Act in an amount that is not less than $400,000 and not more than $6,000,000.

(2) EXCEPTION.—A subgrant made by an eligible institution under this Act to another eligible institution shall not be subject to the minimum amount specified in paragraph (1).

(f) MULTIPLE AWARDS.—For the purposes of this Act, the Secretary may award more than 1 grant to an eligible institution.

(g) SUBGRANTS.—An eligible institution may use grant funds provided under this Act to award subgrants to other eligible institutions at the discretion of, and subject to the oversight of, the Secretary.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized to be appropriated—

(1) $140,000,000 for fiscal year 2004; and

(2) such sums as may be necessary for each of the succeeding 5 fiscal years.

By. Mr. DOMENICI (for himself and Mr. CAMPBELL):

S. 1516. A bill to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the commissioner of Reclamation, to carry out an assessment and demonstration program to assess potential increases in water availability for Bureau of Reclamation projects and other uses through control of salt cedar and Russian olive; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I rise today to reintroduce a piece of legislation that is of paramount importance to the State of New Mexico and many other western States. This bill will address the mounting pressures brought on by the growing demands throughout the west of a diminishing water supply.

This bill that I am introducing today authorizes the Department of Interior acting through the Bureau of Reclamation to establish a series of research and demonstration programs to help with the eradication of this non-native species on rivers in the Western United States. This bill will help develop the scientific knowledge and the experience base to build a strategy to control these invasive thieves. In addition to projects that could benefit the Pecos and the Rio Grande, the bill allows other states in the west such as Texas, Colorado, Utah, California and Arizona to develop and participate in projects as well.

Allow me to explain the importance of this bill. A water crisis has ravaged the west for four years. Drought conditions are expected to expand into the upper mid-west this year. Last year snow packs were abnormally low, causing severe drought conditions. Snow pack conditions this year were also low, but marginally better in the southwest. The rest of the west did not have promising winter snows and spring rains.

The presence of invasive species compounds the drought situation in many states. For instance, New Mexico is home to a vast amount of Salt Cedar. Salt Cedar is a water-thirsty non-native tree that continually strips massive amounts of water out of New Mexico's two predominant water supplies the Pecos and the Rio Grande rivers.

We have already had numerous catastrophic fires in our Nation's forests including the riparian woodland—the Bosque—that runs through the heart of New Mexico's most populous city. One of the reasons this fire ran its course through Albuquerque was the presence of large amounts of Salt Cedar, a plant that burns as easily as it consumes water.

Estimates show that one mature Salt Cedar tree can consume as much as 200 gallons of water per day; over the growing season that is 7 acre feet of water for each acre of Salt Cedar. In addition to the excessive water consumption, Salt Cedars increase fire, increase river channelization and flood frequency, decrease water flow, and increase water and soil salinity along the river. Every problem that drought causes is exacerbated by the presence of Salt Cedar.

I know that the seriousness of the water situation in New Mexico becomes more acute every single day. This drought has affected every New Mexican and nearly everyone in the west in some way. Wells are running dry, farmers are being forced to sell livestock, many of our cities are in various stages of conservation and many, many acres have been charred by fire.

The drought and the mounting legal requirements on both the Pecos and Rio Grande rivers are forcing us toward a severe water crisis in New Mexico. Indeed, every river in the inter-mountain west seems to be facing similar problems. Therefore, we must bring to bear every tool at our disposal for dealing with the water shortages in the west.

Solving such water problems is one of my top priorities and I assure this Congress that this bill will receive prompt attention by the Energy and Natural Resources Committee. Controlling water thirsty invasive species is one significant and substantial step in the right direction for the dry lands of the west.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1516

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Salt Cedar Control Demonstration Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the western United States is currently experiencing its worst drought in modern history;

(2) it is estimated that throughout the western United States salt cedar and Russian olive—

(A) occupy between 1,000,000 and 1,500,000 acres of land; and

(B) are non-beneficial users of 2,000,000 to 4,500,000 acre-feet of water per year;

(3) the quantity of non-beneficial use of water by salt cedar and Russian olive is greater than the quantity that valuable native vegetation would use;

(4) much of the salt cedar and Russian olive infestation is located on Bureau of Land Management land or other land of the Department of the Interior; and

(5) as drought conditions and legal requirements relating to water supply accelerate water shortages, innovative approaches are needed to address the increasing demand for a diminishing water supply.

SEC. 3. SALT CEDAR AND RUSSIAN OLIVE ASSESSMENT AND DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—In furtherance of the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 (106 Stat. 4600), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this Act as the ''Secretary''), shall carry out a salt cedar and Russian olive assessment and demonstration program to—

(1) assess the extent of the infestation of salt cedar and Russian olive in the western United States; and

(2) develop strategic solutions for long-term management of salt cedar and Russian olive.

(b) ASSESSMENT.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary shall complete an assessment of the extent of salt cedar and Russian olive infestation in the western United States. The assessment shall—

(1) consider past and ongoing research on tested and innovative methods to control salt cedar and Russian olive;

(2) consider the feasibility of reducing water consumption;

(3) consider methods of and challenges associated with the restoration of infested land;

(4) estimate the costs of destruction of salt cedar and Russian olive, biomass removal, and restoration and maintenance of the infested land; and

(5) identify long-term management and funding strategies that could be implemented by Federal, State, and private land managers.

(c) DEMONSTRATION PROJECTS.—The Secretary shall carry out not less than 5 projects to demonstrate and evaluate the most effective methods of controlling salt ceder and Russian olive. Projects carried out under this subsection shall—

(1) monitor and document any water savings from the control of salt cedar and Russian olive;

(2) identify the quantity of, and rates at which, any water savings under paragraph (1) return to surface water supplies;

(3) assess the best approach to and tools for implementing available control methods;

(4) assess all costs and benefits associated with control methods and the restoration and maintenance of land;

(5) determine conditions under which removal of biomass is appropriate and the optimal methods for its disposal or use;

(6) define appropriate final vegetative states and optimal revegetation methods; and

(7) identify methods for preventing the regrowth and reintroduction of salt cedar and Russian olive.

(d) CONTROL METHODS.—The demonstration projects carried out under subsection (c) may implement 1 or more control method per project, but to assess the full range of control mechanisms—

(1) at least 1 project shall use airborne application of herbicides;

(2) at least 1 project shall use mechanical removal; and

(3) at least 1 project shall use biocontrol methods such as goats or insects.

(e) IMPLEMENTATION.—A demonstration project shall be carried out during a time period and to a scale designed to meet the requirements of subsection (c).

(f) COSTS.—Each demonstration project under subsection (c) shall be carried out at a cost of not more than $7,000,000, including costs of planning, design, implementation, maintenance, and monitoring.

(2) COST-SHARING.—

(A) FEDERAL SHARE.—The Federal share of the costs of a demonstration project shall not exceed 75 percent.

(B) FORM OF NON-FEDERAL SHARE.—The non-Federal share of the costs of a demonstration project may be provided in the form of in-kind contributions, including services provided by a State agency.

(g) COOPERATION.—In carrying out the program, the Secretary shall—

(1) use the expertise of Federal agencies, national laboratories, Indian tribes, institutions of higher education, State agencies, and soil and water conservation districts that are actively conducting research on or implementing salt cedar and Russian olive control activities; and

(2) cooperate with other Federal agencies and affected States, local units of government, and Indian tribes.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act—

(1) $50,000,000 for fiscal year 2004; and

(2) such sums as are necessary for each fiscal year thereafter.

By Mr. BINGAMAN (for himself and Mr. GRAHAM of Florida):

S. 1517. A bill to revoke and Executive Order relating to procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records; to the Committee on Governmental Affairs.

Mr. BINGAMAN. Mr. President, I rise today with my colleague from Florida, Senator GRAHAM, to introduce a very simple piece of legislation that would revoke President Bush's Executive Order 13233 and put back in force President Reagan's Executive Order 12667—restoring the American people's access to Presidential papers. This bill is the companion to H.R. 1493, which is sponsored by Representative DOUG OSE and has enjoyed bipartisan support in the House.

Twenty-five years ago, this body passed the Presidential Records Act and declared that a President's papers were the property of the people of the United States of America and were to be administered by the National Archives and Records Administration, or NARA. The Act provided that Presidential papers would be made available twelve years after a President left office, allowing the former or incumbent President the right to claim executive privilege for particularly sensitive documents. In order to fulfill that mandate, President Reagan in 1989 signed Executive Order 12667, which gave the former or incumbent President thirty days to claim executive privilege.

However, in 2001, President Bush signed Executive Order 13233, nullifying President Reagan's order and imposing new regulations for obtaining Presidential documents. President Bush's new order greatly restricts access to Presidential papers by forcing all requests for documents, no matter how innocuous, to be approved by both the former President and current White House. In this way the order goes against the letter and the spirit of the Presidential Records Act by requiring the NARA to make a presumption of non-disclosure, thus allowing the White House to prevent the release of records simply by inaction.

The President's order also limits what types of papers are available by expanding the scope of executive privilege into new areas—namely communications between the President and his advisors and legal advice given to the President. Also, former Presidents can now designate third parties to exercise executive privilege on their behalf, meaning that Presidential papers could remain concealed many years after a President's death. These expansions raise some serious constitutional questions and cause unnecessary controversy that could end up congesting our already overburdened courts. My legislation simply seeks to restore a legitimate, streamlined means of carrying out this body's wishes—making Presidential records available for examination by the public and by Congress.

The administration shouldn't fear passage of this bill. Any documents that contain sensitive national security information would remain inaccessible, as would any documents pertaining to law enforcement or the deliberative process of the executive branch. Executive privilege for both former and current Presidents would still apply to any papers the White House designates. With these safeguards in place, there is no reason to further hinder access to documents that are in some cases more than twenty years old.

By not passing this bill, the Congress would greatly limit its own ability to investigate previous administrations, not to mention limit the ability of historians and other interested parties to research the past. Knowledge of the past enriches and informs our understanding of the present, and by limiting our access to these documents we do both ourselves and future generations a great disservice. Numerous historians, journalists, archivists and other scholars have voiced their disapproval of Executive Order 13233 because they understand how important access to Presidential papers can be to accurately describing and learning from past events. We here in the Congress cannot afford to surrender our ability to investigate previous Presidential administrations because doing so would remove a vitally important means of ensuring Presidential accountability.

I believe it is time for these documents to become part of the public record. I believe in open, honest, and accountable government, and I do not believe in keeping secrets from the American people. The Presidential Records Act was one of this country's most vital post-Watergate reforms and it remains vitally important today. In these times when trust in government is slipping more and more every day, we need to send a statement to the American people that we here in Washington don't need to hide from public scrutiny—that instead we welcome and encourage public scrutiny. This bill will send just such a message.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1517

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REVOCATION OF EXECUTIVE ORDER OF NOVEMBER 1, 2001.

Executive Order number 13233, dated November 1, 2001 (66 Fed. Reg. 56025), shall have no force or effect, and Executive Order number 12667, dated January 18, 1989 (54 Fed. Reg. 3403), shall apply by its terms.

By Mr. ENZI:

S. 1518. A bill to restore reliability to the medical justice system by fostering alternatives to current medical tort litigation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI. Mr. President, I rise today to introduce a bill that will help bring about a more reliable system of medical justice for all Americans.

Earlier this month, we had a robust debate on a critical issue—medical liability reform. Though a majority of the Members of this body wanted to begin working to pass the bill, we didn't have the 60 Senators necessary to begin the real work on the legislation.

I co-sponsored that bill, the Patients First Act, and I still support it. Passing the Patients First Act would be an important short-term step to controlling the excesses in our legal system that have sent medical liability insurance premiums through the roof. Skyrocketing premiums are forcing doctors to move their practices to States with better legal environments and lower insurance premiums. This is endangering the availability of critical healthcare services in many areas of Wyoming and other states.

Throughout our debate, I heard many of my colleagues say that they wanted to work on this issue, but that they simply could not support the bill as it stood. We heard that the bill approaches the issue from too narrow of a perspective. We heard that the bill's caps on non-economic damages are unfair to patients, despite the fact that the bill places no limits whatsoever on a patient's right to recover all quantifiable economic damages.

While I disagree with my colleagues who oppose the Patients First Act, I

respect their opposition. I also trust that they sincerely want to help solve our Nation's medical liability and litigation crisis.

During the debate this month, I noticed something interesting. While we argued the ''pros and cons'' of the bill, no one stood up to defend our current system of medical litigation. Now, we heard a lot about the caps, and the insurance industry, and we heard Senators say that ''Yes, there is a problem, but the bill before us won't solve it.''

One thing we didn't hear was a rousing defense of our medical litigation system. Even some of the lawyers in this body agreed that frivolous lawsuits are a problem and that our medical litigation system needs reform.

Why didn't we hear anyone defend the merits of our current medical litigation system? It's because our system doesn't work. It simply doesn't work for patients or for healthcare providers.

Compensation to patients injured by healthcare errors is neither prompt nor fair. The randomness and delay associated with medical litigation does not contribute to timely, reasonable compensation for most injured patients. Some injured patients get huge jury awards, while many others get nothing at all.

Let's look at the facts. In 1991, a group of researchers published a study in the New England Journal of Medicine. The study, known as the Harvard Medical Practice Study, was the basis for the Institute of Medicine's estimate that nearly 100,000 people die every year from healthcare errors.

As part of their study, the researchers reviewed the medical records of a random sample of more than 31,000 patients in New York State. They matched those records with statewide data on medical malpractice claims. The researchers found that nearly 30 percent of injuries caused by medical negligence resulted in temporary disability, permanent disability or death. However, less than 2 percent of those who were injured by medical negligence filed a claim. These figures suggest that most people who suffer negligent injuries don't receive any compensation.

When a patient does decide to litigate, only a few recover anything. Only one of every ten medical malpractice cases actually goes to trial, and of those cases, plaintiffs win less than one of every five. In addition, patients who file suit and are ultimately successful must wait a long time for their compensation—the average length of a medical malpractice action filed in state court is about 30 months.

While the vast majority of malpractice cases that go to trial are settled before the court hands down a verdict, the settlements even then don't guarantee that patients are compensated fairly, particularly after legal fees are subtracted. Research shows that for every dollar paid in malpractice insurance premiums, about 40 cents in compensation is actually paid to the plaintiff—the rest goes for legal fees, court costs, and other administrative expenditures.

To sum up: most patients injured by negligence don't file claims or receive compensation. Few of those that do file claims and go to court recover anything, and those who are successful wait a long time for their compensation. And those who settle out of court end up receiving only 40 cents for every dollar that healthcare providers pay in liability insurance premiums.

It's hard to say that our medical litigation system does right by patients in light of those facts. Unfortunately, our system doesn't work for healthcare providers either.

Earlier, I spoke about those Harvard researchers who found that fewer than 2 percent of those who were injured by medical negligence even filed a claim. As they reviewed the medical records for their study, the researchers also found another interesting fact—most of the providers against whom claims were eventually filed were not negligent at all.

That's right—most providers who were sued had not committed a negligent act.

In matching the records they reviewed to data on malpractice claims, the Harvard researchers found 47 actual malpractice claims. In only 8 of the 47 claims did they find evidence that medical malpractice had caused an injury. Even more amazingly, the physician reviewers found no evidence of any medical injury, negligent or not, in 26 of the 47 claims. However, 40 percent of these cases where they found no evidence of negligence nonetheless resulted in a payment by the provider. Basically, the researchers found no positive relationship between medical negligence and compensation.

That study was based on 1984 data. The same group of researchers conducted another study in Colorado and Utah in 1992, and they found the same thing. As in the 1984 study, they found that only 3 percent of patients who suffered an injury as a result of negligence actually sued. And again, physician reviewers could not find negligence in most of the cases in which lawsuits were filed.

Now, I assume that the patients who sued had either an adverse medical outcome, or at least an outcome that was less satisfactory than the patient expected. But our medical litigation system is not supposed to compensate patients for adverse outcomes or dissatisfaction—it's supposed to compensate patients who are victims of negligent behavior. It's supposed to be a deterrent to substandard medical care.

It's not fair to doctors and hospitals that they must pay to defend against meritless lawsuits. Nor is it fair that they must face a choice between settling for a small sum, even if they aren't at fault, so that they avoid getting sucked into a whirlpool of our medical litigation system.

It's not hard to understand why physicians and hospitals and their insurers want to stay out of court. When they lose, the decisions are increasingly resulting in mega-awards based on subjective ''non-economic'' damages. The number of awards exceeding $1 million grew by 50 percent between the periods of 1994–1996 and 1999–2000. Today, more than half of all jury awards exceed $1 million.

As a result, when a patient suffers a bad outcome and sues, providers have an incentive to settle the case out of court, even if the provider isn't at fault. But is this how our medical litigation system is supposed to work—as a tool for shaking down our healthcare providers?

Let's face it—our medical litigation system is broken. It doesn't work for patients or providers. Even worse, it replaces the trust in the provider-patient relationship with distrust.

Then, when courts and juries render verdicts with huge awards that bear no relation to the conduct of the defendants, this destabilizes the insurance markets and sends premiums skyrocketing. This forces many physicians to curtail, move or drop their practices, leaving patients without access to necessary medical care. This is a particular problem in states like Wyoming, where we traditionally struggle with recruiting doctors and other healthcare providers.

Perhaps we could live with this flawed system if litigation served to improve quality or safety, but it doesn't. Litigation discourages the exchange of critical information that could be used to improve the quality and safety of patient care. The constant threat of litigation also drives the inefficient, costly and even dangerous practice of ''defensive medicine.''

Yes, indeed, defensive medicine is dangerous. A recent study found that one of every 1200 children who receive a CAT scan may die later in life from radiation-induced cancer. Knowing this puts a physician faced with anxious parents in a difficult situation. Does the doctor use his or her professional judgment and tell the parents of a sick child not to worry, or does the doctor order the CAT scan and subject the child to radiation that is probably unnecessary, just to provide some protection against a possible lawsuit?

We have a medical litigation system in which many patients who are hurt by negligent actions receive no compensation for their loss. Those who do receive compensation end up with about 40 cents of every premium dollar after legal fees and other costs are subtracted. And the likelihood and the outcomes of lawsuits and settlements bear little relation to whether or not a healthcare provider was at fault.

We like to say that justice is blind. With respect to our medical litigation system, I would say that justice is absent and nowhere to be found.

During our debate on the Patients First Act, I said that the current medical liability crisis and the shortcomings of our medical litigation system make it clear that it is time for a major change. I also said that regardless of how we voted, we all should work toward replacing the current medical tort liability scheme with a more reliable and predictable system of medical justice.

Today, I am introducing a bill that would help achieve that goal.

Most of us are familiar with the report on medical errors from the Institute of Medicine, also known as the IOM. Many of us may be less familiar with another report that the IOM published earlier this year. That report is called ''Fostering Rapid Advances in Healthcare: Learning from System Demonstrations.''

Our Secretary of Health and Human Services, Tommy Thompson, challenged the IOM to identify bold ideas that would challenge conventional thinking about some of the most vexing problems facing our healthcare system. In response, an IOM committee developed this report, which identified a set of demonstration projects that committee members felt would break new ground and yield a very high return-on-investment in terms of dollars and health.

Medical liability was one of the areas upon which the IOM committee focused. The IOM suggested that the federal government should support demonstration projects in the states. These demonstrations should be based on ''replacing tort liability with a system of patient-centered and safety-focused non-judicial compensation.''

The bill I am introducing today is in the spirit of this IOM report. This bill, the Reliable Medical Justice Act, would authorize funding for States to create demonstration programs to test alternatives to current medical tort litigation.

The funding to States under this bill would cover planning grants for developing proposals based on the models or other innovative ideas. Funding to States would also include the initial costs of getting the alternatives up and running.

The Reliable Medical Justice Act would require participating states and the Federal Government to collaborate in continuous evaluations of the results of the alternatives as compared to traditional tort litigation. This way, all States and the federal government can learn from new approaches.

By funding demonstration projects, I believe Congress could enable States to experiment with and learn from ideas that could provide long-term solutions to the current medical liability and litigation crisis.

In introducing this bill, I wanted to provide some alternative ideas that would contribute to the debate. As a result, the bill describes three models to which states could look in designing their alternatives.

For instance, a State could provide healthcare providers and organizations with immunity from lawsuits if they make a timely offer to compensate an injured patient for his or her actual net economic loss, plus a payment for pain and suffering if experts deem such a payment to be appropriate. This could give a healthcare provider who makes an honest mistake the chance to make amends financially with a patient, without the provider fearing that their honesty would land them in a lawsuit.

Another idea would be for a state to set up classes of avoidable injuries and a schedule of compensation for them, and then establish an administrative board to resolve claims related to those injuries. A scientifically rigorous process of identifying preventable injuries and setting appropriate compensation would be preferable to the randomness of the current system.

Still another option would be for a state to establish a special healthcare court for adjudicating medical malpractice cases. For this idea to work, the State would need to ensure that the presiding judges have expertise in and an understanding of healthcare, and allow them to make binding rulings on issues like causation compensation, and standards of care.

We already have specialized courts for complicated issues like taxes and highly charged issues like substance abuse and domestic violence. With all the flaws in our current medical litigation system, perhaps we should consider special courts for the complex and emotional issue of medical malpractice.

I believe one thing in our medical liability debate is absolutely clear—people are demanding change. Ten States have passed some liability reform in the past year, and another 17 have debated it. States are heeding this call for change, and Congress should support those efforts.

My own State, Wyoming, had a lively legislative debate on medical liability reform this year, but we have a constitutional amendment that prohibits limits on the amounts that can be recovered through lawsuits. The Wyoming Senate considered a bill to amend our State's constitution to create a commission on healthcare errors. That commission would have had the power to review claims, decide if healthcare negligence had occurred, and determine the compensation for the death or injury according to a schedule or formula provided by law. However, the bill died in a tie vote on the Wyoming Senate floor.

According to one of the sponsors of the bill, Senator Charlie Scott, one of the biggest obstacles to passage was the uncertainty surrounding this new idea. No one had any basis for knowing what a proper schedule or formula for compensation would be. No one knew how much the system might cost, or how much injured patients would recover compared to what they recover now.

Senator Scott wrote me to say that federal support for finding answers to these questions might help the bill's sponsors sufficiently respond to the legitimate concerns of their fellow Wyoming legislators. We should be helping state legislators like Senator Scott develop thoughtful and innovative ideas such as the one he has proposed. That's one of the reasons I am offering this bill.

Clearly, the American people and their elected representatives have identified the need to reform our current medical litigation system. The United States Senate did not vote to proceed to the Patients First Act this month, but no member of this body denied that there is a medical liability crisis, or that Congress needs to act sooner rather than later.

While we continue that debate, we ought to lend a hand to States that are working to change their current medical litigation systems and to develop creative alternatives that could work much better for patients and providers. The States have been policy pioneers in many areas—workers' compensation, welfare reform, and electricity de-regulation, to name three. Medical litigation should be the next item on the agenda of the laboratories of democracy that are our 50 States.

No one questions the need to restore reliability to our medical justice system. But how do we begin the process? One way is to foster innovation by encouraging States to develop more rational and predictable methods for resolving healthcare injury claims. And that is what the Reliable Medical Justice Act aims to do.

In the long run, we would all be better off with a more reliable system of medical justice than we have today. I know that my fellow Senators recognize this, so I hope my colleagues on both sides of the aisle will work with me on this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1518

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Reliable Medical Justice Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to restore reliability to the medical justice system by fostering alternatives to current medical tort litigation that promote early disclosure of health care errors and provide prompt, fair, and reasonable compensation to patients who are injured by health care errors; and

(2) to support and assist States in developing such alternatives.

SEC. 3. STATE DEMONSTRATION PROGRAMS TO EVALUATE ALTERNATIVES TO CURRENT MEDICAL TORT LITIGATION.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

"SEC. 3990. STATE DEMONSTRATION PROGRAM TO EVALUATE ALTERNATIVES TO CURRENT MEDICAL TORT LITIGATION.

''(a) IN GENERAL.—The Secretary is authorized to award demonstration grants to States for the development, implementation, and evaluation of alternatives to current tort litigation for resolving disputes over injuries allegedly caused by health care providers or health care organizations.

''(b) DURATION.—The Secretary may award up to 7 grants under subsection (a) and each grant awarded under such subsection may not exceed a period of 10 years.

''(c) CONDITIONS FOR DEMONSTRATION GRANTS.—

''(1) REQUIREMENTS.—Each State desiring a grant under subsection (a) shall—

''(A) develop an alternative to current tort litigation for resolving disputes over injuries allegedly caused by health care providers or health care organizations that may be 1 of the models described in subsection (d); and

''(B) establish procedures to allow for patient safety data related to disputes resolved under subparagraph (A) to be collected and analyzed by organizations that engage in voluntary efforts to improve patient safety and the quality of health care delivery, in accordance with guidelines established by the Secretary.

''(2) ALTERNATIVE TO CURRENT TORT LITIGATION.—Each State desiring a grant under subsection (a) shall demonstrate how the proposed alternative described in paragraph (1)(A)—

''(A) makes the medical liability system more reliable;

''(B) enhances patient safety; and

''(C) maintains access to liability insurance.

''(3) SOURCES OF COMPENSATION.—Each State desiring a grant under subsection (a) shall identify the sources from and methods by which compensation would be paid for claims resolved under the proposed alternative to current tort litigation, which may include public or private funding sources, or a combination of such sources. Funding methods may provide financial incentives for activities that improve patient safety.

''(4) SCOPE.—Each State desiring a grant under subsection (a) may establish a scope of jurisdiction (such as a designated geographic region or a designated area of health care practice) for the proposed alternative to current tort litigation that is sufficient to evaluate the effects of the alternative.

''(d) MODELS.—

''(1) IN GENERAL.—Any State desiring a grant under subsection (a) that proposes an alternative described in paragraph (2), (3), or (4) shall be deemed to meet the criteria under subsection (c)(2).

''(2) EARLY DISCLOSURE AND COMPENSATION MODEL.—In the early disclosure and compensation model, the State shall—

''(A) provide immunity from tort liability (except in cases of fraud, or in cases of criminal or intentional harm) to any health care provider or health care organization that enters into an agreement to pay compensation to a patient for an injury;

''(B) set a limited time period during which a health care provider or health care organization may make an offer of compensation benefits under subparagraph (A), with consideration for instances where prompt recognition of an injury is unlikely or impossible;

''(C) require that the compensation provided under subparagraph (A) include—

''(i) payment for the net economic loss of the patient, on a periodic basis, reduced by any payments received by the patient under—

''(I) any health or accident insurance;

''(II) any wage or salary continuation plan; or

''(III) any disability income insurance;

''(ii) payment for the patient's pain and suffering, if appropriate for the injury, based on a capped payment schedule developed by the State in consultation with relevant experts; and

''(iii) reasonable attorney's fees;

''(D) not abridge the right of an injured patient to seek redress through the State tort system if a health care provider does not enter into a compensation agreement with the patient in accordance with subparagraph (A);

''(E) prohibit a patient who accepts compensation benefits in accordance with subparagraph (A) from filing a health care lawsuit against other health care providers or health care organizations for the same injury; and

''(F) permit a health care provider or health care organization that enters into an agreement to pay compensation benefits to an individual under subparagraph (A) to join in the payment of the compensation benefits of any health care provider or health care organization that is potentially liable, in whole or in part, for the injury.

''(3) ADMINISTRATIVE DETERMINATION OF COMPENSATION MODEL.—

''(A) IN GENERAL.—In the administrative determination of compensation model—

''(i) the State shall—

''(I) designate an administrative entity (in this paragraph referred to as the 'Board') that shall include representatives of—

''(aa) relevant State licensing boards;

''(bb) patient advocacy groups;

''(cc) health care providers and health care organizations; and

''(dd) attorneys in relevant practice areas;

''(II) set up classes of avoidable injuries that will be used by the Board to determine compensation under clause (ii)(II) and, in setting such classes, may consider 1 or more factors, including—

''(aa) the severity of the disability arising from the injury;

''(bb) the cause of injury;

''(cc) the length of time the patient will be affected by the injury;

''(dd) the degree of fault of the health care provider or health care organization; and

''(ee) standards of care that the State may adopt and their breach;

''(III) modify tort liability, through statute or contract, to bar negligence claims in court against health care providers and health care organizations for the classes of injuries established under subclause (II), except in cases of fraud, or in cases of criminal or intentional harm;

''(IV) outline a procedure for informing patients about the modified liability system described in this paragraph and, in systems where participation by the health care provider, health care organization, or patient is voluntary, allow for the decision by the provider, organization, or patient of whether to participate to be made prior to the provision of, use of, or payment for the health care service;

''(V) provide for an appeals process to allow for a review of decisions; and

''(VI) establish procedures to coordinate settlement payments with other sources of payment;

''(ii) the Board shall—

''(I) resolve health care liability claims for certain classes of avoidable injuries as determined by the State and determine compensation for such claims; and

''(II) develop a schedule of compensation to be used in making such determinations that includes—

''(aa) payment for the net economic loss of the patient, on a periodic basis, reduced by any payments received by the patient under any health or accident insurance, any wage or salary continuation plan, or any disability income insurance;

''(bb) payment for the patient's pain and suffering, if appropriate for the injury, based on a capped payment schedule developed by the State in consultation with relevant experts; and

''(cc) reasonable attorney's fees; and

''(iii) the Board may—

''(I) develop guidelines relating to—

''(aa) the standard of care; and

''(bb) the credentialing and disciplining of doctors; and

''(II) develop a plan for updating the schedule under clause (ii)(II) on a regular basis.

''(B) APPEALS.—The State, in establishing the appeals process described in subparagraph (A)(i)(V), may choose whether to allow for de novo review, review with deference, or some opportunity for parties to reject determinations by the Board and elect to file a civil action after such rejection. Any State desiring to adopt the model described in this paragraph shall indicate how such review method meets the criteria under subsection (c)(2).

''(C) TIMELINESS.—Any claim handled under the system described in this paragraph shall provide for adjudication that is more timely and expedited than adjudication in a traditional tort system.

''(4) SPECIAL HEALTH CARE COURT MODEL.—In the special health care court model, the State shall—

''(A) establish a special court for adjudication of disputes over injuries allegedly caused by health care providers or health care organizations;

''(B) ensure that such court is presided over by judges with expertise in and an understanding of health care;

''(C) provide authority to such judges to make binding rulings on causation, compensation, standards of care, and related issues;

''(D) provide for an appeals process to allow for a review of decisions; and

''(E) at its option, establish an administrative entity similar to the entity described in paragraph (3)(a)(i)(I) to provide advice and guidance to the special court.

''(e) APPLICATION.—Each State desiring a grant under subsection (a) shall submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require.

''(f) REPORT.—Each State receiving a grant under subsection (a) shall submit to the Secretary a report evaluating the effectiveness of activities funded with grants awarded under such subsection at such time and in such manner as the Secretary may require.

''(g) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to the States awarded grants under subsection (a). Such technical assistance shall include the development, in consultation with States, of common definitions, formats, and data collection infrastructure for States receiving grants under this section to use in reporting to facilitate aggregation and analysis of data both within and between States. States not receiving grants under this section may also use such common definitions, formats, and data collection infrastructure.

''(h) EVALUATION.—

''(1) IN GENERAL.—The Secretary shall enter into a contract with an appropriate research organization to conduct an overall evaluation of the effectiveness of grants awarded under subsection (a) and to annually prepare and submit a report to the appropriate committees of Congress. Such an evaluation shall begin not later than 18

months following the date of implementation of the first program funded by a grant under subsection (a).

''(2) CONTENTS.—The evaluation under paragraph (1) shall include—

''(A) an analysis of the effect of the grants awarded under subsection (a) on the number, nature, and costs of health care liability claims;

''(B) a comparison of the claim and cost information of each State receiving a grant under subsection (a); and

''(C) a comparison between States receiving a grant under this section and States that did not receive such a grant, matched to ensure similar legal and health care environments, and to determine the effects of the grants and subsequent reforms on—

''(i) the liability environment;

''(ii) health care quality; and

''(iii) patient safety.

''(i) OPTION TO PROVIDE FOR INITIAL PLANNING GRANTS.—Of the funds appropriated pursuant to subsection (k), the Secretary may use a portion not to exceed $500,000 per State to provide planning grants to such States for the development of demonstration proposals meeting the criteria described in subsection (c). In selecting States to receive such planning grants, the Secretary shall give preference to those States in which current law would not prohibit the adoption of an alternative to current tort litigation.

''(j) DEFINITIONS.—In this section:

''(1) HEALTH CARE SERVICES.—The term 'health care services' means any services provided by a health care provider, or by any individual working under the supervision of a health care provider, that relate to—

''(A) the diagnosis, prevention, or treatment of any human disease or impairment; or

''(B) the assessment of the health of human beings.

''(2) HEALTH CARE ORGANIZATION.—The term 'health care organization' means any individual or entity which is obligated to provide, pay for, or administer health benefits under any health plan.

''(3) HEALTH CARE PROVIDER.—The term 'health care provider' means any individual or entity—

''(A) licensed, registered, or certified under Federal or State laws or regulations to provide health care services; or

''(B) required to be so licensed, registered, or certified but that is exempted by other statute or regulation.

''(4) NET ECONOMIC LOSS.—The term 'net economic loss' means—

''(A) reasonable expenses incurred for products, services, and accommodations needed for health care, training, and other remedial treatment and care of an injured individual;

''(B) reasonable and appropriate expenses for rehabilitation treatment and occupational training;

''(C) 100 percent of the loss of income from work that an injured individual would have performed if not injured, reduced by any income from substitute work actually performed; and

''(D) reasonable expenses incurred in obtaining ordinary and necessary services to replace services an injured individual would have performed for the benefit of the individual or the family of such individual if the individual had not been injured.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary. Amounts appropriated pursuant to this subsection shall remain available until expended.''.

By Mr. BINGAMAN (for himself, Ms. LANDRIEU, Mrs. LINCOLN, Mr. KERRY, Mrs. CLINTON, Mrs. MURRAY, Mr. LAUTENBERG, and Ms. MIKULSKI):

S. 1519. A bill to amend title XIX of the Social Security Act to extend medicare cost-sharing for qualifying individuals through 2004; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I am introducing today emergency legislation with Senators LANDRIEU, LINCOLN, KERRY, CLINTON, MURRAY, LAUTENBERG, and MIKULSKI that would extend a critical Federal-State program that assists low-income Medicare beneficiaries in paying their health premiums costs through the Medicaid program. This specific program, for low-income senior and disabled citizens, was enacted as part of the Balanced Budget Act of 1997 and is slated for expiration at the end of fiscal year 2003. The program was extended and is slated for expiration at the end of fiscal year 2003. The program was extended by the two continuing resolutions and the final appropriations bill through September 30, 2003. This legislation would simply further extend it for another year—through the end of 2004.

This program, known as the Qualifying Individual Program, or QI–1, within Medicaid is a block grant payment to states to pay the Medicare Part B premium of $58.70 per month in 2003 for individuals with monthly incomes between $887 and $997 for individuals and between $1,194 and $1,344 for couples. This covers Medicare beneficiaries with income between 120 and 135 percent of the Federal Poverty Level.

This amounts to a benefit of over $700 annually that many older and disabled Americans depend upon to pay for a portion of their health care costs, such as prescription drugs and supplemental coverage. Well over 120,000 people nationwide currently rely on the QI–1 and will be hard pressed to afford Medicare coverage without this assistance. In short, to prevent the erosion of existing low-income protections, Congress must extend the QI–1 program this year.

This is a bipartisan issue as well. President Bush had included QI–1 reauthorization in his fiscal year 2003 budget. Moreover, an extension has been included in S. 1, the ''Prescription Drug and Medicare Improvement Act of 2003,'' but the conference is certainly not going to be completed, passed by both the House and Senate, and signed into law by the President in time before the need for States to send out notices to beneficiaries alerting them to their forthcoming loss of cost sharing protections at the end of September.

As Ron Pollack, Executive Director at Families, USA notes in his letter of support for this legislation, ''Without an extension, over 120,000 low-income Medicare beneficiaries will have to be sent notices that the program is expiring. The result will be confusion, fear, and uncertainty among this population. This disruption can all be avoided by the quick and early passage of your extension bill.''

At the Federal level, the Congress and Administration are often criticized for failure to understand what are or are not the implications to real people. One hundred and twenty thousand low-income beneficiaries face the prospect of their cost sharing increasing by over $700 per year at the end of September. They cannot be assured that an extension will be passed or done so in a timely fashion. How are they supposed to plan and budget?

When we return in September, we will have just a few legislative days to pass an extension in the Senate, the House, and be signed by the President to stop the process of States having to send out disenrollment letters. We all know this can be very difficult to get through the Congress, as it requires unanimous consent, and may not occur in a timely fashion. If not, States will be forced to send out disenrollment letters to the 120,000 low-income seniors and the disabled that rely on the cost-sharing protections provided by the QI–1 program and begin to shut down their programs.

Again, this is emergency legislation that simply provisions a one-year extension of QI–1 program to prevent the cut-off of cost-sharing protections for 120,000 low-income Medicare beneficiaries. We should be engaging in improving health coverage for low-income elderly and disabled citizens rather than leaving these vulnerable Americans facing fear, uncertainty, disruption, and increasing costs.

I urge immediate passage of this legislation and ask unanimous consent that the text of the bill to be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1519

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF MEDICARE COST-SHARING FOR QUALIFYING INDIVIDUALS THROUGH FISCAL YEAR 2004.

(a) IN GENERAL.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended to read as follows:

''(iv) subject to sections 1933 and 1905(p)(4), for making medical assistance available (but only for premiums payable with respect to months during the period beginning with January 1998, and ending with December 2004) for medicare cost-sharing described in section 1905(p)(3)(A)(ii) for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) and is at least 120 percent, but less than 135 percent, of the official poverty line (referred to in such section) for a family of the size involved and who are not otherwise eligible for medical assistance under the State plan;''.

(b) STATE ALLOCATIONS.—Section 1933(c) of the Social Security Act (42 U.S.C. 1396u–3(c)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking ''and'' at the end;

(B) in subparagraph (E)—

(i) by striking ''fiscal year 2002'' and inserting ''each of fiscal years 2002 through 2004''; and

(ii) by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(F) the first quarter of fiscal year 2005 is $100,000,000.''; and

(2) in paragraph (2)(A), by striking ''the sum of'' and all that follows through ''1902(a)(10)(E)(iv)(II) in the State; to'' and inserting ''twice the total number of individuals described in section 1902(a)(10)(E)(iv) in the State; to''.

By Mr. GRAHAM of Florida (for himself, Mrs. FEINSTEIN, and Mr. ROCKEFELLER):

S. 1520. A bill to amend the National Security Act of 1947 to reorganize and improve the leadership of the intelligence community of the United States, to provide for the enhancement of the counterterrorism activities of the United States Government, and for other purposes; to the Select Committee on Intelligence.

Mr. ROCKEFELLER. Mr. President, I am pleased to be an original cosponsor of the ''9–11 Memorial Intelligence Reform Act'' which Senator BOB GRAHAM is introducing today to implement the recommendations of the Joint September 11 Inquiry of the Senate and House Intelligence Committees.

I expect that this important legislation will be referred to the Select Committee on Intelligence, on which I serve as vice chairman. I am committed to working with the Chairman and our colleagues to ensure that the matters addressed in the bill receive the full consideration and action that our national security requires. I expect that other committees, such as the Committee on the Judiciary, will have an interest in some matters covered by the bill, and I look forward to working with them.

The 9–11 Memorial Intelligence Reform Act covers matters ranging from the basic structure of the U.S. intelligence community to improvements in the sharing and analysis of intelligence information, reforms in domestic counterterrorism, and other issues identified in the course of the Joint Inquiry. For some matters, notably on reforming the leadership structure of the intelligence community, the bill proposes specific reforms. For various other matters, the bill calls for executive branch reports that can be the basis for subsequent congressional action.

There are two principal aspects of our work ahead.

The first is to systematically and thoroughly examine the steps that the President, the intelligence community, and other departments and agencies have taken to correct deficiencies in U.S. intelligence and counterterrorism. The Joint Inquiry's recommendations were first announced last December. In the months ahead, we should call on the agencies of the intelligence community, and other components of the executive branch, to report on their concrete measures, both since September 11 and since our recommendations were made public, to correct deficiencies. We should then assess those reports and Administration testimony in committee hearings.

Our second task is to consider reform proposals, including those in Senator GRAHAM's bill. In that regard, I should make clear that the answers proposed in the bill are not the last word on any of those subjects. They are, instead, a beginning point for the Senate's consideration of measures to correct the problems identified by the Joint 9–11 Inquiry.

As we address these important tasks, it will be essential that the Congress and the American public have the benefit of the best ideas available. We will welcome proposals by the administration, by other Members of Congress, from the National Commission on Terrorist Attacks Upon the United States, and concerned citizens.

Important ideas should not be bottled up anywhere. They should be put on the public table.

In that regard, I urge the President to release the intelligence reform recommendations that former National Security Adviser Brent Scowcroft has made to the administration. In public testimony before our Joint Inquiry in September 2002, General Scowcroft testified, in response to a question that I asked him, that in May 2001—before September 11, the President had established a process to review the intelligence community. General Scowcroft testified that he chaired the external panel of that review, but that he could not get into much detail because his report was still classified. It is time, I believe, finally to declassify that report to the extent possible. The Congress and the American public should have the benefit of that distinguished public servant's insights about intelligence community reform.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1521. A bill to direct the Secretary of the Interior to convey certain land to the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada, for the construction of a post building and memorial park for use by the American Legion, other veterans' groups, and the local community; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today for myself and Senator ENSIGN to introduce the Pahrump American Legion Post Land Conveyance Act. This Act will transfer approximately five acres of BLM land in Pahrump, NV, to the American Legion for the purpose of constructing a post home and other facilities that will benefit veterans' groups and the local community.

The American Legion and other nonprofit organizations that represent our Nation's veterans in the vicinity of Pahrump, NV, have tripled in size over the last 10 years. The local memberships of the American Legion, the Veterans of Foreign Wars, and the Disabled American Veterans will soon exceed 1000 members, and will continue to expand with the rest of the fast-growing local community.

The existing facility used by the veterans in Pahrump was built by the Veterans of Foreign Wars in the 1960s. It is much too small and not at all adequate for the veterans' current needs. The nearest facility that can accommodate them is located in Las Vegas, more than 60 miles away.

The Pahrump American Legion would like to build a post building, veterans' garden, and memorial park. These new facilities would benefit not only the local veterans, but would be made available—at no cost—for community activities. The American Legion has tried for over six years to acquire a suitable tract of land to provide a home for a new veterans center. The Legion started a pledge campaign and raised over $16,000 for the building fund before the parcel of land they sought to acquire was removed from consideration by the BLM. Unfortunately, other tracts of land that might represent alternative sites in Pahrump are not suitable.

Mr. President, this situation is intolerable. Without a home, the Pahrump American Legion Post can't offer the kind of services and programs that the veterans in the area deserve. Our veterans aren't the only ones who are suffering, either. All across the United States, the American Legion is deservedly famous for supporting community activities like the Boy Scouts and Girl Scouts, as well as the National Oratorical Contest, American Legion Baseball, Girls and Boys State, and other activities for young people. All of these worthy groups and projects would benefit from the construction of a new post home.

Our bill simply directs the Secretary of the Interior to convey this property from the Bureau of Land Management to American Legion ''Edward H McDaniel'' Post No. 22 in Pahrump. Because of the great public benefit such a facility will provide, we ask that the land be conveyed for free, but that the American Legion cover the costs of the transaction.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1521

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Edward H. McDaniel American Legion Post No. 22 Land Conveyance Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the membership of the American Legion and other nonprofit organizations that represent the veterans' community in Pahrump, Nevada, has grown immensely in the last 10 years;

(2) the existing facility used by the veterans community in Pahrump, which was constructed in the 1960's, is too small and is inappropriate for the needs of the veterans community;

(3) the nearest veterans facility that can accommodate the veterans community in Pahrump is located more than 60 miles away in the city of Las Vegas;

(4) the tracts of land that are available for consideration as potential sites for the location of a new veterans facility are not suitable for the facility;

(5) conveyance of a suitable parcel of land for the facility, which consists of an odd, triangular tract of land bounded on 2 sides by private land and cut off from other public land by a major highway, conforms with the objective of the Bureau of Land Management, Las Vegas District 1998 Resource Management Plan by simplifying the land management responsibilities of the Bureau of Land Management; and

(6) because the intent of the American Legion is to make the facility available to other veterans organizations and the public for community activities and events at no cost, it would be in the best interests of the United States to convey the land to the Edward H. McDaniel American Legion Post No. 22.

SEC. 3. DEFINITIONS.

In this Act:

(1) POST NO. 22.—The term ''Post No. 22'' means the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

SEC. 4. CONVEYANCE OF LAND TO EDWARD H. MCDANIEL AMERICAN LEGION POST NO. 22.

(a) CONVEYANCE ON CONDITION SUBSEQUENT.—Not later than 120 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c) and in accordance with the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.), the Secretary shall convey to Post No. 22, for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (b) is the parcel of Bureau of Land Management land that—

(1) is bounded by Route 160, Bride Street, and Dandelion Road in Nye County, Nevada;

(2) consists of approximately 4.5 acres of land; and

(3) is more particularly described as a portion of the S ¼ of section 29, T. 20 S., R. 54 E., Mount Diablo and Base Meridian.

(c) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—Post No. 22 and any successors of Post No. 22 shall use the parcel of land described in section (b) for the construction and operation of a post building and memorial park for use by Post No. 22, other veterans groups, and the local community for events and activities.

(2) REVERSION.—Except as provided in paragraph (3), if the Secretary, after notice to Post No. 22 and an opportunity for a hearing, makes a finding that Post No. 22 has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1) and Post No. 22 fails to discontinue that use, title to the parcel shall revert to the United States, to be administered by the Secretary.

(3) WAIVER.—The Secretary may waive the requirements of paragraph (2) if the Secretary determines that a waiver would be in the best interests of the United States.

By Mr. SMITH (for himself, Mr. JEFFORDS, and Mr. CONRAD):

S. 1523. A bill to amend part A of title IV of the Social Security Act to allow a State to treat an individual with a disability, including a substance abuse problem, who is participating in rehabilitation services and who is increasing participation in core work activities as being engaged in work for purposes of the temporary assistance for needy families program, and to allow a State to court as a work activity under that program care provided to a child with a physical or mental impairment or an adult dependent for care with a physical or mental impairment; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce the Pathways to Independence Act of 2003, along with Senators CONRAD and JEFFORDS. This bill includes two important provisions that we will work to include in the TANF reauthorization. These provisions will help both TANF recipients with disabilities, and the States as they work with people with disabilities in their respective programs.

In July 2002, the General Accounting Office reported that as many as 44 percent of TANF families have a parent or a child with a physical or mental impairment. This is almost three times as high as among the non-TANF population in the United States. In eight percent of TANF families, there is both a parent and a child with a disability; among non-TANF families, this figure is one percent. The GAO's work confirmed the findings of earlier studies, including work by the Urban Institute and the HHS Inspector General.

These figures mean that we need to make sure that TANF reauthorization legislation give States the ability and incentives to help families meet their current needs, while also helping them to move from welfare to work. This is the lesson that Oregon and many other States have already learned as they developed and refined their TANF programs.

The first provision of my bill provides a pragmatic approach to helping parents with disabilities and substance abuse problems receive the treatment and other rehabilitative services they will need to succeed in a work setting. It is designed so that, over time, States can gradually increase the work activity requirements, while continuing to provide them with rehabilitative services. Under this proposal, much like in other proposals under consideration, a person participating in rehabilitation can be counted as engaged in work activity for three months. After the first three months, if a person continues to need rehabilitative services, the State can continue to count participation in those activities for another three months, so long as that person is engaged in some number of work hours, to be determined by the State.

The next step of my proposal builds on the concept of partial credit that is being considered in the Senate Finance Committee. If, after six months, a State determines that a person has a continuing need for rehabilitative services, the State may create a package that combines work activity with these services. The State will receive credit for the individual's efforts so long as at least one-half of the hours in which the individual participates are in core work activities. For example, if a State receives full credit for a person who works 30 hours per week, and the State has determined that an individual needs rehabilitative services beyond six months, that individual would need to be engaged in core work activities for at least 15 hours per week to get full credit, with the remaining 15 hours spent in rehabilitative services. Similarly, if partial credit is available for a person who works 24 hours per week, then a State could receive that same partial credit if the person was engaged in core work activities for at least 12 hours per week, with the remaining 12 hours spent in rehabilitative services.

This approach is appealing for many reasons. First, it allows States to design a system in which a person can move progressively over time from rehabilitation toward work. Second, it gives States credit for the time and effort they will need to invest to help people move successfully from welfare to work by allowing States to use a range of strategies to help these families. Third, it creates a more realistic structure for individuals with disabilities and addictions who may otherwise fall out of the system either through sanction or discouragement, despite their need for financial support. Finally, this approach is appealing because it is designed to work within the structure of the final TANF reauthorization bill.

The second provision in the bill would allow States the option of counting as work activity the time that an adult in a TANF family spends caring for a child with a disability or an adult relative who is in need of care. The studies reflect that these people often cannot find care for their relative so they can work. They are often forced into the impossible choice of caring for their child with a disability, or leaving that child to go to work in order to continue receiving their TANF grant. This is not a choice a parent should ever have to make.

In order to be able to count the care provided by the TANF recipient as work activity, the State would first be required to determine that the child or adult with a disability is, in fact, truly disabled, and that the person needs substantial ongoing care. Then, the State must decide that the TANF recipient is the most appropriate means for providing the needed care. The State would also have to conduct regular periodic evaluations to determine that the child or adult with a disability continues to need the care provided by the TANF recipient. Nothing in the provision prevents a State from determining that the TANF recipient can

work outside the home or engage in other work-related training or other activities that will help the person eventually move to work on a full- or part-time basis.

I would like to submit for the record a letter from close to forty national organizations that are members of the Consortium for Citizens with Disabilities supporting this legislation, as well as a letter of support from my home State of Oregon. I look forward to working with my co-sponsors, Senators CONRAD and JEFFORDS, and with the Chairman of the Finance Committee on these important provisions in the upcoming months, and I urge my colleagues to join us in support of this legislation.

I ask unanimous consent that the text of the bill and letters of support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows.

S. 1523

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Pathways to Independence Act of 2003''.

SEC. 2. STATE OPTION TO COUNT REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS AS WORK FOR PURPOSES OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM.

(a) IN GENERAL.—Section 407(c)(2) of the Social Security Act (42 U.S.C. 607(c)(2)) is amended by adding at the end the following:

''(E) STATE OPTION TO TREAT AN INDIVIDUAL WITH A DISABILITY, INCLUDING A SUBSTANCE ABUSE PROBLEM, WHO IS PARTICIPATING IN REHABILITATION SERVICES AS BEING ENGAGED IN WORK.—

''(i) INITIAL 3-MONTH PERIOD.—Subject to clauses (ii) and (iii), for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), a State may deem an individual described in clause (iv) as being engaged in work for not more than 3 months in any 24-month period.

''(ii) ADDITIONAL 3-MONTH PERIOD.—A State may extend the 3-month period under clause (i) for an additional 3 months only if, during such additional 3-month period, the individual engages in a work activity described in subsection (d) for such number of hours per month as the State determines appropriate.

''(iii) SUCCEEDING MONTHS.—

''(I) CREDIT FOR INDIVIDUALS PARTICIPATING IN WORK ACTIVITIES AND REHABILITATION SERVICES.—If a State has deemed an individual described in clause (iv) as being engaged in work for 6 months in accordance with clauses (i) and (ii), and the State determines that the individual is unable to satisfy the work requirement under the State program funded under this part that applies to the individual without regard to this subparagraph because of the individual's disability, including a substance abuse problem, the State shall receive the credit determined under subclause (II) toward the monthly participation rate for the State.

''(II) DETERMINATION OF CREDIT.—For purposes of subclause (I), the credit the State shall receive under that subclause is, with respect to a month, the lesser of—

''(aa) the sum of the number of hours the individual participates in an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) for the month and the number of hours that the individual participates in rehabilitation services under this subparagraph for the month; or

''(bb) twice the number of hours the individual participates in an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) for the month.

''(iv) INDIVIDUAL DESCRIBED.—For purposes of this subparagraph, an individual described in this clause is an individual who the State has determined has a disability, including a substance abuse problem, and would benefit from participating in rehabilitative services.

''(v) DEFINITION OF DISABILITY.—In this subparagraph, the term 'disability' means—

''(I) a physical or mental impairment that constitutes or results in a substantial impediment to employment; or

''(II) a physical or mental impairment that substantially limits 1 or more major life activities.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2003.

SEC. 3. STATE OPTION TO COUNT CARING FOR A CHILD OR ADULT DEPENDENT FOR CARE WITH A PHYSICAL OR MENTAL IMPAIRMENT AS MEETING ALL OR PART OF THE WORK REQUIREMENT.

(a) IN GENERAL.—Section 407(c)(2) of the Social Security Act (42 U.S.C. 607(c)(2)), as amended by section 2, is amended by adding at the end the following:

''(F) RECIPIENT CARING FOR A CHILD OR ADULT DEPENDENT FOR CARE WITH A PHYSICAL OR MENTAL IMPAIRMENT DEEMED TO BE MEETING ALL OR PART OF A FAMILY'S WORK PARTICIPATION REQUIREMENTS FOR A MONTH.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), a State may count the number of hours per week that a recipient engages in providing substantial ongoing care for a child or adult dependent for care with a physical or mental impairment if the State determines that—

''(I) the child or adult dependent for care has been verified through a medically acceptable clinical or laboratory diagnostic technique as having a significant physical or mental impairment or combination of impairments and as a result of that impairment, it is necessary that the child or adult dependent for care have substantial ongoing care;

''(II) the recipient providing such care is the most appropriate means, as determined by the State, by which the care can be provided to the child or adult dependent for care;

''(III) for each month in which this subparagraph applies to the recipient, the recipient is in compliance with the requirements of the recipient's self-sufficiency plan; and

''(IV) the recipient is unable to participate fully in work activities, after consideration of whether there are supports accessible and available to the family for the care of the child or adult dependent for care.

''(ii) TOTAL NUMBER OF HOURS LIMITED TO BEING COUNTED AS 1 FAMILY.—In no event may a family that includes a recipient to which clause (i) applies be counted as more than 1 family for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b).

''(iii) STATE REQUIREMENTS.—In the case of a recipient to which clause (i) applies, the State shall—

''(I) conduct regular, periodic evaluations of the recipient's family; and

''(II) include as part of the recipient's self-sufficiency plan, regular updates on what special needs of the child or the adult dependent for care, including substantial ongoing care, could be accommodated either by individuals other than the recipient or outside of the home.

''(iv) 2-PARENT FAMILIES.—

''(I) IN GENERAL.—If a parent in a 2-parent family is caring for a child or adult dependent for care with a physical or mental impairment—

''(aa) the State may treat the family as a 1-parent family for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b); and

''(bb) the State may not count any hours of care for the child or adult dependent for care for purposes of determining such rates.

''(II) SPECIAL RULE.—If the adult dependent for care in a 2-parent family is 1 of the parents and the State has complied with the requirements of clause (iii), the State may count the number of hours per week that a recipient engages in providing substantial ongoing care for that adult dependent for care.

''(v) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed as prohibiting a State from including in a recipient's self-sufficiency plan a requirement to engage in work activities described in subsection (d).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2003.

CONSORTIUM FOR CITIZENS WITH DISABILITIES,
July 31, 2003.

Hon. GORDON SMITH,
U.S. Senate,
Washington, DC.
Hon. JAMES M. JEFFORDS,
U.S. Senate,
Washington, DC.
Hon. KENT CONRAD,
U.S. Senate,
Washington, DC.

DEAR SENATORS SMITH, CONRAD AND JEFFORDS: We are writing to thank you for introducing legislation that addresses two key problems facing TANF families with a parent or child with a disability. We believe that these provisions, if included in a larger TANF reauthorization bill, will significantly improve the ability of states to help families successfully move from welfare toward work while also ensuring that the needs of family members with disabilities are met. We enthusiastically support this legislation.

The Consortium for Citizens with Disabilities (CCD) is a coalition of national consumer, advocacy, provider and professional organizations headquartered in Washington, DC. We work together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD TANF Task Force seeks to ensure that families that include persons with disabilities are afforded equal opportunities and appropriate accommodations under the Temporary Assistance for Needy Families (TANF) block grant.

The research is clear that many TANF families include a parent or a child with a disability, and in some families, there is both a child and a parent with a disability. The numbers are high—GAO has found that as many as 44 percent of TANF families have a child or a parent with a disability—and need to be addressed in the policy choices that Congress makes in TANF reauthorization. We believe that, by designing policies that take into account the needs of families with a member with a disability, Congress can help the states move greater numbers of these families off of welfare and toward greater independence. Without reasonable

supports, however, and through no fault of their own, these families sometimes fail at work activity and are often subject to inappropriate sanctioning and the crises that flow from abrupt—and often prolonged—loss of income.

Your bill could provide low-income families with members with disabilities real opportunities to achieve self-sufficiency in two significant ways, if included in larger TANF reauthorization legislation:

Allow states to count individuals participating in rehabilitative services beyond three months, while the individual progressively engages in work activity.

Under current law, states have the flexibility—either through a waiver such as Oregon has or as a result of the caseload reduction credit—to ensure that a parent with a disability, including a substance abuse problem, receives the rehabilitative services she needs in order to move towards work. In recent years, increasing numbers of states have used this flexibility as they realized that some parents would need more specialized help if they were going to successfully leave TANF. Some of the current reauthorization proposals, however,—including the House-passed bill, H.R. 4—limit states to counting three months of rehabilitative services as work activity. An arbitrary limit of three months of rehabilitation services would be inadequate to help many families with members with disabilities find and sustain employment, and, in light of proposed increases in state participation rates, would discourage states from designing programs and requirements that work for people with the most severe barriers.

Your bill will allow states to count rehabilitative services as work activity beyond three months as long as the rehabilitative services are mixed with work activity. We believe this mix of activities and supports will help an individual with severe barriers move toward greater independence. First, the provision would extend the period of time during which rehabilitative services, including substance abuse treatment, can count toward the work participation requirements from three months to six months. However, during the second three months, the state would require a small amount of work activity in addition to rehabilitative services. Further, the provision would allow states to count individuals participating in rehabilitative services after this six month period as long as at least one-half of the hours in which the individual participates are in core work activities. This will allow states to create a progression of work activity hours combined with rehabilitative services over time that will assist in moving the family from welfare to work at a pace that is designed to lead to success for that family.

CCD is not asking Congress to exempt individuals, or family members, with disabilities from participation in the TANF program. On the contrary, we are looking for the essential assistance and supports that will help families move off of welfare toward greater independence. Your bill does not create any exemptions from participation requirements, and in fact, provides the necessary assistance and supports that can come with participation in the TANF program. Under the bill, states would have to engage the same number of recipients in welfare-to-work activities as under the standard set in a new reauthorization law. The provision simply allows states to utilize a broader range of activities to help recipients with barriers move to work. In short, this is a way to make the TANF program work for parents with disabilities and substance abuse problems. The provision would give states credit when recipients with barriers are engaged in activities and, thus, will encourage states to assist families with barriers to progress toward work in a manner and at a pace that is more tailored to their needs and disabilities.

Allow states to count as work activity the time that the adult in the TANF family spends caring for a child with a disability or an adult relative with a disability.

It is very difficult to find safe, accessible, and appropriate child care for a child with a disability. This is often the case regardless of the family's income. In addition, the nature of some children's disabilities and health conditions means that parents are called from work regularly to assist a school with the child or to take the child to medical appointments. At the same time, many parents would like to work as much as possible or receive the training they will need to secure a good job when they are no longer needed in the home to care for their children with disabilities.

Your bill will allow states to receive work credit for the time that a parent spends caring for a child with a disability, if the state has determined that this is the best way to secure the child's care. The provision also would apply to providing care for an adult relative with a disability. This would help to address the bind that some TANF recipients face when they are told they must work away from home, but leave an elderly parent or other relative with a disability without the care they need to continue to live in the community. Nothing in the provision would prevent a state from designing a plan with the parent that combines some amount of in-home care as work activity with other activities that will help the parent prepare to enter the workforce at a time that is appropriate in meeting the needs of the child or adult relative with a disability.

Thank you again for introducing this legislation and your leadership on these very important issues. We look forward to working with you and your staffs to ensure that these provisions become law.

Sincerely,

American Association of People with Disabilities, American Association on Mental Retardation, American Congress of Community Supports and Employment Services, American Counseling Association, American Music Therapy Association, American Network of Community Options And Resources, Association of Maternal and Child Health Programs, Association of University Centers on Disability, Bazelon Center for Mental Health Law, Community Legal Services, Council for Exceptional Children, Council for Learning Disabilities, Council of State Administrators of Vocational Rehabilitation, Disability Service Providers of America, Division for Early Childhood of the Council for Exceptional Children, Easter Seals, Epilepsy Foundation, Goodwill Industries International,

Helen Keller National Center, Learning Disabilities Association, National Alliance to End Homelessness, National Association of County Behavioral Health Directors, National Association of Protection and Advocacy Systems, National Association of Social Workers, National Association of State Directors of Special Education, National Association of State Mental Health Program Directors, National Coalition of Parent Center, National Coalition on Deaf-Blindness, National Council for Community Behavioral Healthcare, National Mental Health Association, National Rehabilitation Association, National Organization of Social Security Claimants' Representatives, PACER Center, Spina Bifida Association of America, TASH, The Arc of the United States, United Cerebral Palsy.

OREGON LAW CENTER,
Portland, OR, July 31, 2003.

Hon. GORDON SMITH,
U.S. Senate, Washington, DC.
Hon. JAMES M. JEFFORDS,
U.S. Senate, Washington, DC.
Hon. KENT CONRAD,
U.S. Senate, Washington, DC.

DEAR SENATORS SMITH, CONRAD AND JEFFORDS: I am writing on behalf of the clients of the Oregon Law Center to express our enthusiastic support for the Work and Treatment Act of 2003 which you are sponsoring. The Oregon Law Center is a nonprofit law firm with offices throughout Oregon, that advocates on behalf of low income families on a variety of issues including the Temporary Assistance to Needy Families program. The Work and Treatment Act addresses a critical shortcoming in the current TANF law: that is, the failure to address the needs of recipients with disabilities.

Oregon's TANF waiver, which expired on July 1, 2003, allowed the state to address the treatment needs of adults and children with disabilities in the family's self-sufficiency plan. Oregon found, as has substantial national research, that the TANF population contains a high percentage of families who are unemployed or underemployed due to the disability of the head of the household, or due to the need to provide care to household dependents with disabilities. This bill would allow Oregon to continue its work with these families to help them achieve their highest levels of self-sufficiency.

Thanks to all of you and particularly to Senator Smith who has demonstrated great leadership in the TANF debates and great understanding of the desperate needs of low income families in Oregon.

Respectfully submitted,

LOREY H. FREEMAN,
Attorney at Law.

Mr. JEFFORDS. Mr. President, it is a pleasure for me to introduce today, along with my colleagues Senator SMITH of Oregon and Senator CONRAD of North Dakota, the Pathways to Independence Act of 2003.

Let me begin by describing why this legislation is necessary. Currently, States have to meet a certain level of work participation in order to avoid penalties against their welfare funding. This level of work participation can be lowered through the ''caseload reduction credit.'' This means that States receive credit for moving people off of their welfare caseload. The caseload reduction credit has proven to be very successful since welfare reform was enacted in 1996. In fact, most States have received so much credit for moving people off of their caseloads, that their effective work participation rate is 0 percent.

While this approach has been widely regarded as very successful, it has one major flaw. States are rewarded only for removing people from welfare, there is no consideration given to where those people end up. States get the same credit for training someone to be a nurse, electrician, or carpenter as they do for sending that person to live on the streets.

This perverse incentive has been particularly difficult for the many welfare recipients who suffer from a disability or struggle with a substance abuse problem. In many States it is easier to write these people off than to give

them the support necessary to become truly independent.

In Vermont, approximately 15 percent of the welfare caseload is diagnosed with a disability and receives services through the Department of Vocational Rehabilitation. However, that treatment is not included in the ''core activities'' allowed under welfare reform. So the State receives no credit for moving these individuals to independence. This is wrong.

If we truly want welfare to be an initiative that helps people to become independent and self-sufficient, then we must be willing to take the steps necessary to get them there. This legislation would give States the tools necessary to assist them in that effort.

Here is how it would work. The bill will allow States to count people with disabilities or substance abuse problems as working, provided that they are meeting certain criteria. First, a State can count someone as working for three months if they are involved in a treatment program. At the end of this three month period, the State can re-evaluate the status of the individual and decide to continue treatment for another 3 months. Now, the individual must be engaged in work or work-preparation activities in addition to their continuing treatment program. At the end of 6 months, the State can continue treatment with the individual as long as the individual is meeting half of the regular work requirement and following their treatment program for the remaining hours.

This is a common sense proposal. It is consistent with what we know about providing effective support programs to people with disabilities and effective treatment programs for people struggling with substance abuse. Allowing States to count these people in the ''working'' category provides the States with the necessary incentives to engage their welfare recipients in meaningful interventions. It will allow the States to truly place people with disabilities and substance abuse problems on a pathway to independence.

In addition, this bill includes a provision first put forward by Senator CONRAD that will allow States to exempt people who need to care for a child or family member with a disability. This is a proposal that was part of last year's Senate Finance Committee Work, Opportunity and Responsibility for Kids (WORK) bill, and I applaud Senator CONRAD for his consistent support of that proposal.

It is unclear when a full reauthorization of welfare will occur. It is clear however, that The Pathways to Independence Act of 2003 should be a part of any welfare reform package. I would like to thank the Consortium for Citizens with Disabilities for their help in developing this legislation and their strong letter in support. I especially want to thank my colleague from Oregon, Senator SMITH, and my colleague from North Dakota, Senator CONRAD and their staff for all of the hard work that has gone into producing this proposal.

By Mr. SANTORUM (for himself, Mr. ALLEN, Mr. BUNNING, Mrs. DOLE, and Mr. KYL):

S. 1524. A bill to amend the Internal Revenue Code of 1986 to allow a 7-year applicable recovery period for depreciation of motorsports entertainment complexes; to the Committee on Finance.

Mr. SANTORUM. Mr. President, today I am introducing the Motorsports Facilities Fairness Act. This bill would clarify the tax treatment of a large and growing industry that contributes to the economies of communities across the country.

The Motorsports Facilities Fairness Act would provide certainty to track and speedway operators regarding the depreciation of their properties. The Internal Revenue Service has just recently raised questions regarding the depreciation treatment used by facility owners. For decades, motorsports facilities were classified as ''theme and amusement facilities'' for depreciation. This long-standing treatment was widely applied and accepted, until now. Over the years, relying on this understanding of the tax law, facility owners and operators invested hundreds of millions of dollars in building and upgrading these properties.

Pennsylvania is home to many of these facilities, including Pocono Raceway, Nazareth Speedway, Lake Erie Speedway, Jennertown Speedway, Big Diamond Raceway and Motordrome Speedway. These tracks and others boost their local economies. Larger races can draw tens of thousands of fans, some from hundreds of miles away. These facilities are an important part of the fabric of our national economy. As motorsports continues to grow as a national pastime, we must ensure that Federal policy does not unnecessarily impede its contribution to the economy.

To that end I have introduced the Motorsports Facilities Fairness Act. This legislation would simply codify the well-understood, long-standing and widely-accepted treatment of motorsports facilities for depreciation purposes. While modest in scope, it will provide needed clarity to the hundreds of tracks throughout the United States.

I urge my colleagues to join me in supporting the Motorsports Facilities Fairness Act.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1526. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of Indian tribal governments as State governments for purposes of issuing tax-exempt governmental bonds, and for other purposes; to the Committee on Finance.

Mr. CAMPBELL. Mr. President, I am pleased to be join by Senator INOUYE in introducing the Tribal Government Tax Exempt Bond Fairness Act of 2003. This bill will assist Indian tribes raise capital in the private markets for purposes of job creation and economic development. The bill complements the other economic development initiative I am introducing today to discipline Federal programs aimed to help tribes strengthen their economies.

While making modest adjustments in current law, this bill will have far-reaching and positive effects for tribal governments and their members around the Nation.

The fact is that like State governments, tribal governments are responsible for a host of services not only to their members but to non-members who live on or hear their lands. These services include fire, police and ambulance service, road and bridge maintenance, and a host of social services.

Unlike State governments, however, tribal governments face severe restrictions in their ability to finance development through debt instruments.

The law forbids tribes from issuing tax-exempt bonds for any project unless it can meet the so-called ''essential government function'' test.

That is, in order for the holder of a tribal bond issue to receive income from that bond exempt from Federal tax, it must be issued for activities that are ''governmental'' in nature.

Examples of the kinds of projects that have been ruled by the Internal Revenue Service as falling outside this test are tribal convention centers, hotels, and golf courses.

State governments are not limited by the ''essential government function'' test when they issue tax-exempt debt. The bill I am introducing today will eliminate the disparate treatment tribes now receive.

Armed with this bonding authority, tribal governments will strengthen their economies, provide for their members and others, and lessen their reliance on Federal programs and services.

These are all worthy goals and I urge my colleagues to join me in supporting this bill.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1526

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act maybe cited as the ''Tribal Government Tax-Exempt Bond Fairness Act of 2003''.

SEC. 2. DECLARATIONS AND AFFIRMATIONS.

Congress declares and affirms that—

(1) The United States Constitution, United States Federal court decisions, and United States statutes recognize that Indian tribes are governments, retaining sovereign authority over their lands.

(2) Through treaties, statutes, and Executive orders, the United States set aside Indian reservations to be used as ''permanent homelands'' for Indian tribes.

(3) As governments, Indian tribes have the responsibility and authority to provide governmental services, develop tribal economies, and build community infrastructure to

ensure that Indian reservation lands serve as livable ''permanent homelands''.

(4) Congress is vested with the authority to regulate commerce with Indian tribes, and hereby exercises that authority and affirms the United States government-to-government relationship with Indian tribes.

SEC. 3. MODIFICATIONS OF AUTHORITY OF INDIAN TRIBAL GOVERNMENTS TO ISSUE TAX-EXEMPT BONDS.

(a) IN GENERAL.—Subsection (c) of section 7871 of the Internal Revenue Code of 1986 (relating to Indian tribal governments treated as States for certain purposes) is amended to read as follows:

''(c) ADDITIONAL REQUIREMENTS FOR TAX-EXEMPT BONDS.—

''(1) IN GENERAL.—Subsection (a) of section 103 shall apply to any obligation issued by an Indian tribal government (or subdivision thereof) only if—

''(A) such obligation is part of an issue 95 percent or more of the net proceeds of which are to be used to finance any facility located on an Indian reservation, or

''(B) such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

''(2) EXCLUSION OF GAMING.—An obligation described in subparagraph (A) or (B) of paragraph (1) may not be used to finance any portion of a building in which class II or III gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2702)) is conducted or housed.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(B) INDIAN RESERVATION.—The term 'Indian reservation' means—

''(i) a reservation, as defined in section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and

''(ii) lands held under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) by a Native corporation as defined in section 3(m) of such Act (43 U.S.C. 1602(m)).''.

SEC. 4. EXEMPTION FROM REGISTRATION REQUIREMENTS.

The first sentence of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by inserting ''or by any Indian tribal government or subdivision thereof (within the meaning of section 7871 of the Internal Revenue Code of 1986),'' after ''or Territories,''.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to obligations issued after the date of the enactment of this Act.

By Mr. SANTORUM (for himself, Mr. DODD, Mr. CHAFEE, Ms. COLLINS, Mr. KERRY, Mr. SCHUMER, Mr. REED, and Mr. LIEBERMAN):

S. 1527. A bill to establish a Tick-Borne Disorders Advisory Committee, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANTORUM. Mr. President, I am proud to join my colleague, Senator CHRIS DODD of Connecticut, in reintroducing bipartisan legislation to address the ruinous effects of America's most common tick-borne illness, Lyme disease.

I thank the senior Senator from Connecticut for his long involvement and leadership on this very important public health issue. With thousands of Americans contracting Lyme disease each year, it is essential that we work aggressively to wage a comprehensive fight against Lyme and other tick-borne disorders, which cost our country dearly in the way of medical expenditures and human suffering. The current lack of physician knowledge about Lyme and the inadequacies of existing detection methods stand out as deficiencies in our efforts to combat Lyme, and only serve to compound this growing public health hazard.

We have it within our capacity to finally deliver on promises made to Lyme patients and their families to better focus the federal government's efforts to detect and research a cure for Lyme. Toward the end of the last session of Congress, the Senate passed this legislation, but unfortunately the House of Representatives did not have the opportunity to consider it.

This legislation represents years of work with the Lyme advocacy community to reach consensus how we can best move forward on this issue. The goal of our bill is for the federal government to develop more accurate and more reliable diagnostic tools, and to provide access to more effective treatment and ultimately a cure.

Between 1991 and 1999, the annual number of reported cases of Lyme disease increased by an astonishing 72 percent. Even as this dramatic increase took place, poor coordination and the lack of proper funding have left too many questions unanswered.

This legislation will seek to set a new course for our public health strategies toward Lyme by ensuring that the proper collaboration is taking place between the Federal government and the people it serves.

With this consensus legislation we are calling for the formation of a Department of Health and Human Services Advisory Committee that will bring Federal agencies, such as the CDC and the NIH, to the table with patient organizations, clinicians, and members of the scientific community. This Committee will report its recommendations to the Secretary of HHS. It will ensure that all scientific viewpoints are given consideration at NIH and the CDC, and will give a voice to the patient community which has often been left out of the dialogue.

Our legislation will also provide an additional $10 million each year over the next five years for public health agencies to work with researchers around the country to develop better diagnostic tests and to increase their efforts to educate the public about Lyme disease.

I sincerely hope that our colleagues will join Senator DODD and myself in this most worthy cause and cosponsor this important bill. Lyme disease patients and their families have waited too long for a responsive plan of action to address their suffering and needs.

The tremendous efforts of the Lyme patient and advocacy community have been very helpful in raising awareness and mobilizing support for this issue, and for this both Senator DODD and I thank them. I look forward to working with them, Senator DODD, and our colleagues to enact into law strong legislation to help correct the mistakes of the past, and to give greater hope for the future by ensuring patients that the federal government is doing everything in its power to provide better treatments and ultimately a cure.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1527

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) Lyme disease is a common but frequently misunderstood illness that, if not caught early and treated properly, can cause serious health problems.

(2) Lyme disease is a bacterial infection that is transmitted by a tick bite. Early signs of infection may include a rash and flu-like symptoms such as fever, muscle aches, headaches, and fatigue.

(3) Although Lyme disease can be treated with antibiotics if caught early, the disease often goes undetected because it mimics other illnesses or may be misdiagnosed. Untreated, Lyme disease can lead to severe heart, neurological, eye, and joint problems because the bacteria can affect many different organs and organ systems.

(4) If an individual with Lyme disease does not receive treatment, such individual can develop severe heart, neurological, eye, and joint problems.

(5) Although Lyme disease accounts for 90 percent of all vector-borne infections in the United States, the ticks that spread Lyme disease also spread other disorders, such as ehrlichiosis, babesiosis, and other strains of Borrelia. All of these diseases in 1 patient makes diagnosis and treatment more difficult.

(6) Although tick-borne disease cases have been reported in 49 States and the District of Columbia, about 90 percent of the 15,000 cases have been reported in the following 10 States: Connecticut, Pennsylvania, New York, New Jersey, Rhode Island, Maryland, Massachusetts, Minnesota, Delaware, and Wisconsin. Studies have shown that the actual number of tick-borne disease cases are approximately 10 times the amount reported due to poor surveillance of the disease.

(7) Persistence of symptomatology in many patients without reliable testing makes treatment of patients more difficult.

SEC. 2. ESTABLISHMENT OF A TICK-BORNE DISORDERS ADVISORY COMMITTEE.

(a) ESTABLISHMENT OF COMMITTEE.—Not later than 180 days after the date of enactment of this Act, there shall be established an advisory committee to be known as the Tick-Borne Disorders Advisory Committee (referred to in this Act as the ''Committee'') organized in the Office of the Secretary.

(b) DUTIES.—The Committee shall advise the Secretary and Assistant Secretary of Health regarding how to—

(1) assure interagency coordination and communication and minimize overlap regarding efforts to address tick-borne disorders;

(2) identify opportunities to coordinate efforts with other Federal agencies and private organizations addressing tick-borne disorders; and

(3) develop informed responses to constituency groups regarding the Department of Health and Human Services' efforts and progress.

(c) MEMBERSHIP.—

(1) APPOINTED MEMBERS.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall appoint voting members to the Committee from among the following member groups:

(i) Scientific community members.

(ii) Representatives of tick-borne disorder voluntary organizations.

(iii) Health care providers.

(iv) Patient representatives who are individuals who have been diagnosed with tick-borne illnesses or who have had an immediate family member diagnosed with such illness.

(v) Representatives of State and local health departments and national organizations who represent State and local health professionals.

(B) REQUIREMENT.—The Secretary shall ensure that an equal number of individuals are appointed to the Committee from each of the member groups described in clauses (i) through (v) of subparagraph (A).

(2) EX OFFICIO MEMBERS.—The Committee shall have nonvoting ex officio members determined appropriate by the Secretary.

(d) CO-CHAIRPERSONS.—The Assistant Secretary of Health shall serve as the co-chairperson of the Committee with a public co-chairperson chosen by the members described under subsection (c). The public co-chairperson shall serve a 2-year term and retain all voting rights.

(e) TERM OF APPOINTMENT.—All members shall be appointed to serve on the Committee for 4 year terms.

(f) VACANCY.—If there is a vacancy on the Committee, such position shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of that term. Members may serve after the expiration of their terms until their successors have taken office.

(g) MEETINGS.—The Committee shall hold public meetings, except as otherwise determined by the Secretary, giving notice to the public of such, and meet at least twice a year with additional meetings subject to the call of the co-chairpersons. Agenda items can be added at the request of the Committee members, as well as the co-chairpersons. Meetings shall be conducted, and records of the proceedings kept as required by applicable laws and Departmental regulations.

(h) REPORTS.—

(1) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the activities carried out under this Act.

(2) CONTENT.—Such reports shall describe—

(A) progress in the development of accurate diagnostic tools that are more useful in the clinical setting; and

(B) the promotion of public awareness and physician education initiatives to improve the knowledge of health care providers and the public regarding clinical and surveillance practices for Lyme disease and other tick-borne disorders.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this Act, $250,000 for each of fiscal years 2004 and 2005. Amounts appropriated under this subsection shall be used for the expenses and per diem costs incurred by the Committee under this section in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), except that no voting member of the Committee shall be a permanent salaried employee.

SEC. 3. AUTHORIZATION FOR RESEARCH FUNDING.

There are authorized to be appropriated $10,000,000 for each of fiscal years 2004 through 2008 to provide for research and educational activities concerning Lyme disease and other tick-borne disorders, and to carry out efforts to prevent Lyme disease and other tick-borne disorders.

SEC. 4. GOALS.

It is the sense of the Senate that, in carrying out this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary''), acting as appropriate in consultation with the Director of the Centers for Disease Control and Prevention, the Director of the National Institutes of Health, the Committee, and other agencies, should consider carrying out the following:

(1) FIVE-YEAR PLAN.—It is the sense of the Senate that the Secretary should consider the establishment of a plan that, for the five fiscal years following the date of the enactment of this Act, provides for the activities to be carried out during such fiscal years toward achieving the goals under paragraphs (2) through (4). The plan should, as appropriate to such goals, provide for the coordination of programs and activities regarding Lyme disease and other tick-borne disorders that are conducted or supported by the Federal Government.

(2) FIRST GOAL: DIAGNOSTIC TEST.—The goal described in this paragraph is to develop a diagnostic test for Lyme disease and other tick-borne disorders for use in clinical testing.

(3) SECOND GOAL: SURVEILLANCE AND REPORTING OF LYME DISEASE AND OTHER TICK-BORNE DISORDERS.—The goal described in this paragraph is to accurately determine the prevalence of Lyme disease and other tick-borne disorders in the United States.

(4) THIRD GOAL: PREVENTION OF LYME DISEASE AND OTHER TICK-BORNE DISORDERS.—The goal described in this paragraph is to develop the capabilities at the Department of Health and Human Services to design and implement improved strategies for the prevention and control of Lyme disease and other tick-borne diseases. Such diseases may include Masters' disease, ehrlichiosis, babesiosis, other bacterial, viral and rickettsial diseases such as tularemia, tick-borne encephalitis, Rocky Mountain Spotted Fever, and bartonella, respectively.

Mr. DODD. Mr. President, it is with great pleasure that I rise today to introduce legislation for the research, prevention, and treatment of Lyme disease. This bipartisan legislation works toward the goal of eradicating Lyme disease—a devastating disease that has particularly impacted those of us from Connecticut and the Northeast. The Senate showed its strong support for this legislation when it passed it in the last Congress by Unanimous Consent. It is my hope that the Senate will show this same support again to ensure the goals of this legislation are achieved.

Lyme disease can be devastating to those it affects. The disease first achieved prominence in the 1980s in the state of Connecticut and got its name from the town of Lyme, CT. Today, Connecticut residents have the unfortunate distinction of being 10 times more likely to contract Lyme disease than the rest of the nation. However, the incidence of Lyme disease nationwide is on the rise. In fact, cases of Lyme disease have been reported by 49 states and the District of Columbia. Since 1982, the number of Lyme disease cases reported to health officials has exceeded 200,000. Even more disconcerting are reports indicating that the actual incidence of Lyme disease may be significantly greater than what is reported.

Those infected with Lyme disease may experience a number of health problems including facial paralysis, joint swelling, loss of coordination, irregular heartbeat, liver malfunction, depression, and memory loss. Unfortunately, this devastating disease can often be misdiagnosed, due to the fact that the symptoms presented by Lyme disease often look similar to other conditions. The misdiagnosis of this often debilitating illness can result in prolonged pain and suffering, unnecessary tests, expensive treatments, as well as severe emotional consequences for victims and their families.

The legislation we introduce today will build on earlier efforts to tackle the problem of Lyme disease and other tick-borne disorders. Through an amendment that I offered to the Fiscal Year 1999 Department of Defense (DoD) appropriations bill, an additional $3 million was directed toward DoD's research in this area. This was an important first step in the fight to increase our understanding of this disease, but much more remains to be done. This legislation will provide what is necessary to continue the effort to research, prevent and treat Lyme disease and other tick-borne disorders.

A critical component of this legislation is the creation of a federal advisory committee on Lyme disease and other tick-borne disorders. This advisory committee, the first of its kind, will include members of the scientific community, health care providers, and most directly impacted by the disease, Lyme patients and their families. Among its activities, the committee will identify opportunities for coordination and communication between Federal agencies and private organizations in their efforts to combat Lyme disease.

This legislation also includes other key elements designed to conquer Lyme disease and other tick-borne disorders. It provides a framework for the government to establish clear goals in the areas of research, treatment, and prevention of Lyme disease. Crucial to activities in each of these areas, is the fact that this legislation authorizes $10 million in annual funding for federal activities related to the elimination of Lyme disease.

I would like to thank my colleague from Pennsylvania, Senator RICK SANTORUM, the legislation's chief Republican cosponsor, for his dedicated

support of this important initiative. I look forward to continuing to work with Senator SANTORUM, my other colleagues, and the Lyme disease community to strengthen our efforts to eradicate Lyme disease. This legislation provides an important step toward reaching this laudable goal.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1528. A bill to establish a procedure to authorize the integration and coordination of Federal funding dedicated to the community, business, and economic development of Native American communities; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, I am pleased to be joined by Senator INOUYE in introducing a bill to assist Indian tribes in their efforts to strengthen their economies.

Despite recent success some Indian tribes have had with gaming, tourism and natural resource development, the fact is that most tribes still suffer high unemployment, intense poverty and a lack of physical infrastructure.

Most tribal economies continue to perform poorly despite the expenditure of hundreds of millions—even billions—of Federal dollars over the years by the Departments of Agriculture, Commerce, Defense, Interior, Labor, and others.

The core problem is not the amount of dollars, but rather how they are being spent.

Numerous hearings by the Committee on Indian Affairs and several General Accounting Office (GAO) reports show that most Federal efforts are poorly timed and coordinated and lack the kind of tribal decision-making to make the efforts succeed.

The bill we are introducing today will go a long way in fixing these problems.

The principles that guide the bill are not new. In 1970 President Nixon issued his ''Special Message to Congress on Indian Affairs'' that called for significant changes in Federal Indian policy.

Nixon saw that Indians were not in command of the Federal programs and services meant for their benefit and he launched a quiet revolution in Federal Indian policy.

The Indian Self-Determination and Education Assistance Act of 1975 authorizes Indian tribes and tribal consortia to ''step into the shoes'' of the Federal government to administer programs and services historically provided by the United States.

Currently, one-half of the programs and services of the Bureau of Indian Affairs and the Indian Health Service are now contracted by Indian tribes and consortia. Tribal decisionmaking is paramount, service quality has improved, and tribal capacity has been enhanced significantly.

This bill will expand the principles of Indian self-determination to have the tribes—not the Federal bureaucracy—determine which programs and services should be brought to bear in an integrated and coordinated way to bring hope, jobs, and strengthened economies to their communities.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1528

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TITLE.

The Act may be cited as the ''Indian Tribal Development Consolidated Funding Act of 2003''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) a unique legal and political relationship exists between the United States and Indian tribes that is reflected in article I, section 8, clause 3 of the Constitution, various treaties, Federal statutes, Supreme Court decisions, executive agreements, and course of dealing;

(2) despite the infusion of a substantial amount of Federal funds into Native American communities over several decades, the majority of Native Americans remain mired in poverty, unemployment, and despair;

(3) the efforts of the United States to foster community, economic, and business development in Native American communities have been hampered by fragmentation of authority, responsibility, and performance, and lack of timeliness and coordination in resources and decisionmaking; and

(4) the effectiveness of Federal and tribal efforts in generating employment opportunities and bringing value-added activities and economic growth to Native American communities depends on cooperative arrangements among the various Federal agencies and Indian tribes.

(b) PURPOSES.—The purposes of this Act are—

(1) to enable Indian tribes and tribal organizations to use available Federal assistance more effectively and efficiently;

(2) to adapt and target such assistance more readily to particular needs through wider use of projects that are supported by more than 1 agency, assistance program, or appropriation of the Federal Government;

(3) to encourage Federal-tribal arrangements under which Indian tribes and tribal organizations may more effectively and efficiently combine Federal and tribal resources to support economic development projects;

(4) to promote the coordination of Native American economic programs to maximize the benefits of those programs to encourage a more consolidated, national policy for economic development; and

(5) to establish a procedure to aid Indian tribes in obtaining Federal resources and in more efficiently administering those resources for the furtherance of tribal self-governance and self-determination.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPLICANT.—The term ''applicant'' means an Indian tribe or tribal organization, or a consortium of Indian tribes or tribal organizations, that submits an application under this Act for assistance in carrying out a project.

(2) ASSISTANCE.—The term ''assistance'' means the transfer of anything of value for a public purpose, support, or stimulation that is—

(A) authorized by a law of the United States;

(B) provided by the Federal Government through grant or contractual arrangements (including technical assistance programs providing assistance by loan, loan guarantee, or insurance); and

(C) authorized to include an Indian tribe or tribal organization, or a consortium of Indian tribes or tribal organizations, as eligible for receipt of funds under a statutory or administrative formula for the purposes of community, economic, or business development.

(3) ASSISTANCE PROGRAM.—The term ''assistance program'' means any program of the Federal Government that provides assistance for which Indian tribes or tribal organizations are eligible.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PROJECT.—

(A) IN GENERAL.—The term ''project'' means a community, economic, or business development undertaking that includes components that contribute materially to carrying out a purpose or closely-related purposes that are proposed or approved for assistance under more than 1 Federal Government program.

(B) INCLUSION.—The term ''project'' includes a project designed to improve the environment, a housing facility, a community facility, a business or industrial facility, or transportation, a road, or a highway, with respect to an Indian tribe, tribal organization, or consortium.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) TRIBAL ORGANIZATION.—The term ''tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 4. LEAD AGENCY.

The Department of the Interior shall be the lead agency for purposes of carrying out this Act.

SEC. 5. SELECTION OF PARTICIPATING TRIBES.

(a) PARTICIPANTS.—

(1) IN GENERAL.—The Secretary may select from the applicant pool described in subsection (b) Indian tribes or tribal organizations, not to exceed 24 in each fiscal year, to submit an application to carry out a project under this Act.

(2) CONSORTIA.—Two or more Indian tribes or tribal organizations that are otherwise eligible to participate in a program or activity to which this Act applies may form a consortium to participate as an applicant under paragraph (1).

(b) APPLICANT POOL.—The applicant pool described in this subsection shall consist of each Indian tribe or tribal organization that—

(1) successfully completes the planning phase described in subsection (c);

(2) requests participation in a project under this Act through a resolution or other official action of the tribal governing body; and

(3) demonstrates, for the 3 fiscal years immediately preceding the fiscal year for which participation is requested, financial stability and financial management capability as demonstrated by a showing by the Indian tribe or tribal organization that there were no material audit exceptions in the required annual audit of the self-determination contracts of the Indian tribe or tribal organization.

(c) PLANNING PHASE.—Each applicant—

(1) shall complete a planning phase that includes—

(A) legal and budgetary research; and

(B) internal tribal government and organizational preparation; and

(2) on completion of the planning phase, shall be eligible for joint assistance with respect to a project.

SEC. 6. APPLICATION REQUIREMENTS, REVIEW, AND APPROVAL.

(a) REQUIREMENTS.—An applicant shall submit to the head of the Federal agency responsible for administering the primary Federal program to be affected by the project an application that—

(1) identifies the programs to be integrated;

(2) proposes programs that are consistent with the purposes described in section 2(b);

(3) describes—

(A) a comprehensive strategy that identifies the manner in which Federal funds are to be integrated and delivered under the project; and

(B) the results expected from the project;

(4) identifies the projected expenditures under the project in a single budget;

(5) identifies the agency or agencies of the tribal government that are to be involved in the project;

(6) identifies any Federal statutory provisions, regulations, policies, or procedures that the applicant requests be waived in order to implement the project; and

(7) is approved by the governing body of the applicant, including, in the case of an applicant that is a consortium or tribes or tribal organizations, the governing body of each affected member tribe or tribal organization.

(b) REVIEW.—On receipt of an application that meets the requirements of subsection (a), the head of the Federal agency receiving the application shall—

(1) consult with the applicant and with the head of each Federal agency that is proposed to provide funds to implement the project; and

(2) consult and coordinate with the Department of the Interior as the lead agency under this Act for the purposes of processing the application.

(c) APPROVAL.—

(1) WAIVERS.—

(A) IN GENERAL.—Subject to subparagraph (B), notwithstanding any other provision of law, the head of the Federal agency responsible for administering any statutory provision, regulation, policy, or procedure that is identified in an application in accordance with subsection (a)(6) or as a result of the consultation required under subsection (b), and that is requested by the applicant to be waived, shall waive the statutory provision, regulation, policy, or procedure.

(B) LIMITATION.—A statutory provision, regulation, policy, or procedure identified for waiver under subparagraph (A) may not be waived by an agency head if the agency head determines that a waiver would be inconsistent with—

(i) the purposes described in section 2(b); or

(ii) any provision of the statute governing the program involved that is specifically applicable to Indian programs.

(2) PROJECT.—

(A) IN GENERAL.—Not later than 90 days after the date of receipt of an application that meets the requirements of subsection (a), the head of the Federal agency receiving the application shall inform the applicant, in writing, of the approval or disapproval of the application, including the approval or disapproval of any waiver sought under paragraph (1).

(B) DISAPPROVAL.—If an application or waiver is disapproved—

(i) the written notice shall identify the reasons for the disapproval; and

(ii) the applicant shall be provided an opportunity to amend the application or to petition the agency head to reconsider the disapproval.

SEC. 7. AUTHORITY OF HEADS OF FEDERAL AGENCIES.

(a) IN GENERAL.—The President, acting through the heads of the appropriate Federal agencies, shall promulgate regulations necessary—

(1) to carry out this Act; and

(2) to ensure that this Act is applied and implemented by all Federal agencies.

(b) SCOPE OF COVERAGE.—The Federal agencies that are included within the scope of this Act shall include—

(1) the Department of Agriculture;

(2) the Department of Commerce;

(3) the Department of Defense;

(4) the Department of Education;

(5) the Department of Energy;

(6) the Department of Health and Human Services;

(7) the Department of Homeland Security;

(8) the Department of Housing and Urban Development;

(9) the Department of the Interior;

(10) the Department of Justice;

(11) the Department of Labor;

(12) the Department of Transportation;

(13) the Department of the Treasury;

(14) the Department of Veterans Affairs;

(15) the Environmental Protection Agency;

(16) the Small Business Administration; and

(17) such other agencies as the President determines to be appropriate.

(c) ACTIVITIES.—Notwithstanding any other provision of law, the head of each Federal agency, acting alone or jointly through an agreement with another Federal agency, may—

(1) identify related Federal programs that are suitable for providing joint financing of specific kinds of projects with respect to Indian tribes or tribal organizations;

(2) assist in planning and developing such projects to be financed through different Federal programs;

(3) with respect to Federal programs or projects that are identified or developed under paragraphs (1) or (2), develop and prescribe—

(A) guidelines;

(B) model or illustrative projects;

(C) joint or common application forms; and

(D) other materials or guidance;

(4) review administrative program requirements to identify requirements that may impede the joint financing of such projects and modify the requirements appropriately;

(5) establish common technical and administrative regulations for related Federal programs to assist in providing joint financing to support a specific project or class of projects; and

(6) establish joint or common application processing and project supervision procedures, including procedures for designating—

(A) an agency responsible for processing applications; and

(B) a lead agency responsible for project supervision.

(d) REQUIREMENTS.—In carrying out this Act, the head of each Federal agency shall—

(1) take all appropriate actions to carry out this Act when administering an assistance program;

(2) consult and cooperate with the heads of other Federal agencies; and

(3) assist in the administration of assistance programs of other Federal agencies that may be used to jointly finance projects undertaken by Indian tribes or tribal organizations.

SEC. 8. PROCEDURES FOR PROCESSING REQUESTS FOR JOINT FINANCING.

In processing an application for assistance for a project to be financed in accordance with this Act by at least 2 assistance programs, the head of a Federal agency shall take all appropriate actions to ensure that—

(1) required reviews and approvals are handled expeditiously;

(2) complete account is taken of special considerations of timing that are made known to the head of the Federal agency by the applicant that would affect the feasibility of a jointly financed project;

(3) an applicant is required to deal with a minimum number of representatives of the Federal Government;

(4) an applicant is promptly informed of a decision or problem that could affect the feasibility of providing joint assistance under the application; and

(5) an applicant is not required to get information or assurances from 1 Federal agency for a requesting Federal agency in a case in which the requesting agency makes the information or assurances directly.

SEC. 9. UNIFORM ADMINISTRATIVE PROCEDURES.

(a) IN GENERAL.—To make participation in a project simpler than would otherwise be practicable because of the application of inconsistent or conflicting technical or administrative regulations or procedures that are not specifically required by the statute that governs the Federal program under which the project is funded, the head of a Federal agency may promulgate uniform regulations concerning inconsistent or conflicting requirements with respect to—

(1) the financial administration of the project, including with respect to accounting, reporting, and auditing, and maintaining a separate bank account, to the extent consistent with this Act;

(2) the timing of payments by the Federal Government for the project in a case in which 1 payment schedule or a combined payment schedule is to be established for the project;

(3) the provision of assistance by grant rather than procurement contract; and

(4) the accountability for, or the disposition of, records, property, or structures acquired or constructed with assistance from the Federal Government under the project.

(b) REVIEW.—To make the processing of applications for assistance under a project simpler under this Act, the head of a Federal agency may provide for review of proposals for a project by a single panel, board, or committee in any case in which reviews by separate panels, boards, or committees are not specifically required by the statute that authorizes the Federal program under which the project is funded.

SEC. 10. DELEGATION OF SUPERVISION OF ASSISTANCE.

(a) IN GENERAL.—In accordance with regulations promulgated under section 7(a), the head of a Federal agency may delegate or otherwise enter into an arrangement to have another Federal agency carry out or supervise a project or class of projects jointly financed in accordance with this Act.

(b) CONDITIONS.—A delegation or other arrangement under subsection (a)—

(1) shall be made under conditions ensuring that the duties and powers delegated are exercised consistent with Federal law; and

(2) may not be made in a manner that relieves the head of a Federal agency of responsibility for the proper and efficient management of a project for which the agency provides assistance.

SEC. 11. JOINT ASSISTANCE FUNDS AND PROJECT FACILITATION.

(a) JOINT ASSISTANCE FUND.—In providing support for a project in accordance with this Act, the head of a Federal agency may provide for the establishment in the Treasury by an applicant of a joint assistance fund to ensure that amounts received by the applicant from more than 1 assistance program or appropriation are effectively administered.

(b) AGREEMENT.—

(1) IN GENERAL.—A joint assistance fund may be established under subsection (a) only in accordance with an agreement by the Federal agencies involved concerning the responsibilities of each such agency.

(2) REQUIREMENTS OF AGREEMENT.—An agreement under paragraph (1) shall—

(A) ensure the availability of necessary information to Federal agencies and Congress; and

(B) provide that the agency providing for the establishment of the fund under subsection (a) is responsible and accountable by program and appropriation for the amounts provided for the purposes of each fund..

(c) USE OF EXCESS FUNDS.—In any project conducted under this Act for which a joint assistance fund has been established under subsection (a) and the actual costs of the project are less than the estimated costs, use of the excess funds shall be determined by the head of the Federal agency administering the joint assistance fund, after consultation with the applicant.

SEC. 12. FINANCIAL MANAGEMENT, ACCOUNTABILITY, AND AUDITS.

(a) SINGLE AUDIT ACT.—Recipients of funding provided in accordance with this Act shall be subject to chapter 75 of title 31, United States Code.

(b) RECORDS.—

(1) IN GENERAL.—With respect to each project financed through an account in a joint assistance fund established under section 11, the recipient of amounts from the fund shall maintain records as required by the head of the Federal agency responsible for administering the fund.

(2) REQUIREMENTS.—Records described in paragraph (1) shall disclose—

(A) the amount and disposition by the recipient of assistance received under each Federal assistance program and appropriation;

(B) the total cost of the project for which such assistance was given or used;

(C) the part of the cost of the project provided from other sources; and

(D) such other information as the head of the Federal agency responsible for administering the fund determines will facilitate the conduct of an audit of the project.

(c) AVAILABILITY.—Records of a recipient related to an amount received from a joint assistance fund under this Act shall be made available, for inspection and audit, to—

(1) the head of the Federal agency responsible for administering the fund; and

(2) the Comptroller General of the United States.

SEC. 13. TECHNICAL ASSISTANCE AND PERSONNEL TRAINING.

Amounts available for technical assistance and personnel training under any Federal assistance program shall be available for technical assistance and training under a project approved for joint financing under this Act if the use of the funds involves the Federal assistance program and the project approved for joint financing.

SEC. 14. JOINT STATE FINANCING FOR FEDERAL-TRIBAL ASSISTED PROJECTS.

(a) IN GENERAL.—Under regulations promulgated under section 7(a), the head of a Federal agency may enter into an agreement with a State to extend the benefits of this Act to a project that involves assistance from—

(1) at least 1 Federal agency;

(2) a State; and

(3) at least 1 tribal agency or instrumentality.

(b) JOINT ACTION.—An agreement under subsection (a) may include arrangements to process requests or administer assistance on a joint basis.

SEC. 15. REPORT TO CONGRESS.

Not later than 1 year after the date of enactment of this Act, the President shall submit to Congress a report that includes—

(1) a description of actions taken under this Act;

(2) a detailed evaluation of the implementation of this Act, including information on the benefits and costs of jointly financed projects that accrue to participating Indian tribes and tribal organizations; and

(3) recommendations (including legislative recommendations) of the President with respect to improvement of this Act.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1529. A bill to amend the Indian Gaming Regulatory Act to include provisions relating to the payment and administration of gaming fees, and for other purposes; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, today I am pleased to be joined by Senator INOUYE in introducing the Indian Gaming Regulatory Act Amendments of 2003 to amend and update the act.

In amending the Indian Gaming Regulatory Act of 1988 (IGRA) it is important to keep in mind the twin aims of the act: to ensure that gaming continues to be a tool for Indian economic development; and to ensure that the games conducted are kept free from corrupting forces to maintain the integrity of the industry.

This bill will update the IGRA by clarifying how vacancies in the National Indian Gaming Commission (NIGC) are filled; revising the NIGC statutory rates of pay to correspond with other current Federal rates of pay; and expanding the NIGC's reporting requirements to Congress.

The bill also clarifies the act by making the Johnson Act inapplicable to class II technological aids to bring it in line with the original intent of Congress in 1988.

The bill also requires background checks on class III management contractors, management employees, and gaming commissioners.

When the IGRA was enacted in 1988, Indian gaming was mainly high stakes bingo operations, known as ''class II gaming'' under the act. Virtually no one thought Indian gaming would become the $14.5 billion dollar industry that it is today, providing tribes with resources for development and employment opportunities where none previously existed.

In response to this success, questions have been raised—some legitimate, some not—about the efficacy of regulation within the industry. This bill requires that the NIGC and the gaming tribes develop and implement a system of minimum internal control, background investigation and licensing standards for all tribes that operate class II and class III gaming.

The bill would also ensure that the NIGC has the resources it needs to fulfill its regulatory duties by increasing the fee cap 50 percent over the next six years. With that budgetary increase, and prior to levying any fees, the NIGC would be required to determine and take into account the nature and level of any tribal or joint tribal-state regulatory activities and to reduce the fees assessed accordingly.

The bill will enable the NIGC to provide technical assistance and training to Indian tribes. The NIGC would be authorized to expend the civil fines it recoups for violations of the IGRA for these purposes.

The last substantive reform in the bill goes to the very heart of the act—economic development for Indian tribes. Because of gaming, some tribes have been very successful, employing thousands of people, both Indian and non-Indian, and reducing poverty and the welfare rolls in their areas.

This success has attracted the attention of other governments, cash-strapped and hungry for new revenues. Many States are looking to gaming tribes to help eliminate their deficits, and some States are reportedly refusing to enter or renew compacts required under IGRA until tribes agree to revenue sharing provisions.

Congress never envisioned that kind of pressure would be applied to tribes and, keeping these facts and the goals of IGRA in mind, the bill includes provisions to ensure that tribal gaming revenues are first used to meet the needs of tribal governments and their members. Only after satisfying those needs, would States and tribes be able to negotiate a revenue-sharing agreement.

To encourage States and tribes to negotiate, the bill requires the Secretary to perform her existing responsibilities under the act within 90 days and, at the back end, when existing compacts are up for renewal, the bill provides a 180 day grace period beyond the expiration date of compacts to encourage tribal-State agreements.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1529

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Indian Gaming Regulatory Act Amendments of 2003''.

SEC. 2. PAYMENT AND ADMINISTRATION OF GAMING FEES.

(a) DEFINITIONS.—Section 4(7) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(7)) is amended by adding at the end the following:

''(G) TECHNOLOGICAL AIDS.—Notwithstanding any other provision of law, sections 1 through 7 of the Act of January 2, 1951 (commonly known as the 'Gambling Devices Transportation Act') (15 U.S.C. 1171 through 1177) shall not apply to any gaming described in subparagraph (A)(i) for which an electronic aid, computer, or other technological aid is used in connection with the gaming.''.

(b) NATIONAL INDIAN GAMING COMMISSION.—Section 5 of the Indian Gaming Regulatory Act (25 U.S.C. 2704) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) VACANCIES.—

''(1) IN GENERAL.—A vacancy on the Commission shall be filled in the same manner as the original appointment.

''(2) SUCCESSORS.—Unless a member of the Commission is removed for cause under subsection (b)(6), the member may—

''(A) be reappointed; and

''(B) serve after the expiration of the term of the member until a successor is appointed.''; and

(2) in subsection (e), in the last sentence, by inserting ''or disability'' after ''in the absence''.

(c) POWERS OF CHAIRMAN.—Section 6 of the Indian Gaming Regulatory Act (25 U.S.C. 2705) is amended by adding at the end the following:

''(c) DELEGATION.—The Chairman may delegate to an individual Commissioner any of the authorities described in subsection (a).

''(d) APPLICABLE AUTHORITY.—In carrying out any function under this section, a Commissioner serving in the capacity of the Chairman shall be governed by—

''(1) such general policies as are formally adopted by the Commission; and

''(2) such regulatory decisions, findings, and determinations as are made by the Commission.''.

(d) POWERS OF COMMISSION.—Section 7 of the Indian Gaming Regulatory Act (25 U.S.C. 2706) is amended—

(1) in paragraphs (1), (2), and (4) of subsection (b), by striking ''class II gaming'' each place it appears and inserting ''class II gaming and class III gaming'';

(2) by redesignating subsection (c) as subsection (d);

(3) by inserting after subsection (b) the following:

''(c) STRATEGIC PLAN.—

''(1) IN GENERAL.—The Commission shall develop a strategic plan for use in carrying out activities of the Commission.

''(2) REQUIREMENTS.—The strategic plan shall include—

''(A) a comprehensive mission statement describing the major functions and operations of the Commission;

''(B) a description of the goals and objectives of the Commission;

''(C) a description of the means by which those goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to achieve those goals and objectives;

''(D) a performance plan for achievement of those goals and objectives that is consistent with—

''(i) other components of the strategic plan; and

''(ii) section 1115 of title 31, United States Code;

''(E) an identification of the key factors that are external to, or beyond the control of, the Commission that could significantly affect the achievement of those goals and objectives; and

''(F) a description of the program evaluations used in establishing or revising those goals and objectives, including a schedule for future program evaluations.

''(3) BIENNIAL PLAN.—

''(A) PERIOD COVERED.—The strategic plan shall cover a period of not less than 5 fiscal years beginning with the fiscal year in which the plan is submitted.

''(B) UPDATES AND REVISIONS.—The strategic plan shall be updated and revised biennially.''; and

(4) in subsection (d) (as redesignated by paragraph (2))—

(A) in paragraph (3), by striking ''and'' at the end;

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following:

''(4) the strategic plan for activities of the Commission described in subsection (c); and''.

(e) COMMISSION STAFFING.—Section 8 of the Indian Gaming Regulatory Act (25 U.S.C. 2707) is amended—

(1) in subsection (a), by striking ''GS–18 of the General Schedule under section 5332'' and inserting ''level IV of the Executive Schedule under section 5318'';

(2) in subsection (b)—

(A) by striking ''(b) The Chairman'' and inserting the following:

''(b) STAFF.—

''(1) IN GENERAL.—The Chairman''; and

(B) by striking the last sentence and inserting the following:

''(2) COMPENSATION.—

''(A) IN GENERAL.—Staff appointed under paragraph (1) shall be paid without regard to the provision of chapter 51 and subchapter III of chapter 53, of title 5, United States Code, relating to General Schedule pay rates.

''(B) MAXIMUM RATE OF PAY.—The rate of pay for an individual appointed under paragraph (1) shall not exceed the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.''; and

(3) by striking subsection (c) and inserting the following:

''(c) TEMPORARY SERVICES.—

''(1) IN GENERAL.—The Chairman may procure temporary and intermittent services under section 3109 of title 5, United States Code.

''(2) MAXIMUM RATE OF PAY.—The rate of pay for an individual for service described in paragraph (1) shall not exceed the daily equivalent of the maximum rate payable for level IV of the Executive Schedule under section 5318 of title 5, United States Code.

(f) TRIBAL GAMING ORDINANCES.—Section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) is amended—

(1) in subsection (b)(2)(F), by striking clause (i) and inserting the following:

''(i) ensures that—

''(I) background investigations are conducted on the tribal gaming commissioners, key tribal gaming commission employees, and primary management officials and key employees of the gaming enterprise; and

''(II) oversight of primary management officials and key employees is conducted on an ongoing basis; and''; and

(2) in subsection (d)—

(A) in paragraph (4)—

(i) by striking ''(4) Except'' and inserting the following:

''(4) REVENUE SHARING.—

''(A) IN GENERAL.—Except for any assessments that may be agreed to under paragraph (3)(C)(iii), nothing in this section confers on a State or political subdivision of a State authority to impose any tax, fee, charge, or other assessment on any Indian tribe or any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based on the lack of authority in the State or a political subdivision of the State to impose such a tax, fee, charge, or other assessment.

''(B) APPORTIONMENT OF REVENUES.—The Secretary may not approve any Tribal-State compact or other agreement that includes an apportionment of net revenues with a State, local government, or other Indian tribes unless—

''(i) in the case of apportionment with other Indian tribes, the net revenues are not distributable by the other Indian tribes to members of the Indian tribes on a per capita basis;

''(ii) in the case of apportionment with local governments, the total amount of net revenues exceeds the amounts necessary to meet the requirements of clauses (i) and (ii) of subsection (b)(2)(B), but only to the extent that the excess revenues reflect the actual costs incurred by affected local governments as a result of the operation of gaming activities; or

''(iii) in the case of apportionment with a State—

''(I) the total amount of net revenues—

''(aa) exceeds the amounts necessary to meet the requirements of clauses (i) and (ii) of subsection (b)(2)(B) and clause (ii) of this subparagraph, if applicable; and

''(bb) is in accordance with regulations promulgated by the Secretary under subparagraph (C); and

''(II) a substantial economic benefit is rendered by the State to the Indian tribe.

''(C) REGULATIONS.—Not later than 90 days after the date of enactment of this paragraph, the Secretary shall promulgate regulations to provide guidance to Indian tribes and States on the scope of allowable assessments negotiated under paragraph (3)(C)(iii) and the apportionment of revenues negotiated in accordance with subparagraph (B).'';

(B) in paragraph (7)(B)(vii), by inserting ''not later than 90 days after notification is made'' after ''the Secretary shall prescribe''; and

(C) by adding at the end the following:

''(10) EXTENSION OF TERM OF TRIBAL-STATE COMPACT.—Any Tribal-State compact approved by the Secretary in accordance with paragraph (8) shall remain in effect for up to 180 days after expiration of the Tribal-State compact if—

''(A) the Indian tribe certifies to the Secretary that the Indian tribe requested a new compact not later than 90 days before expiration of the compact; and

''(B) a new compact has not been agreed on.''.

(g) MANAGEMENT CONTRACTS.—Section 12 of the Indian Gaming Regulatory Act (25 U.S.C. 2711) is amended—

(1) by striking the section heading and all that follows through ''Subject'' in subsection (a)(1) and inserting the following:

''SEC. 12. MANAGEMENT CONTRACTS.

''(a) CLASS II GAMING AND CLASS III GAMING ACTIVITIES; INFORMATION ON OPERATORS.—

''(1) GAMING ACTIVITIES.—Subject''; and

(2) in subsection (a)(1), by striking ''class II gaming activity that the Indian tribe may engage in under section 11(b)(1) of this Act,'' and inserting ''class II gaming activity in which the Indian tribe may engage under section 11(b)(1), or a class III gaming activity in which the Indian tribe may engage under section 11(d),''.

(h) COMMISSION FUNDING.—Section 18 of the Indian Gaming Regulatory Act (25 U.S.C. 2717) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) through (3) and inserting the following:

''(1) SCHEDULE OF FEES.—

''(A) IN GENERAL.—Except as provided in this section, the Commission shall establish a schedule of fees to be paid annually to the Commission, on a quarterly basis, by each gaming operation that conducts a class II gaming or class III gaming activity that is regulated, in whole or in part, by this Act.

''(B) RATES.—The rate of fees under the schedule established under subparagraph (A) that are imposed on the gross revenues from each operation that conducts a class II gaming or class III gaming activity described in that paragraph shall be (as determined by the Commission)—

''(i) a progressive rate structure levied on the gross revenues in excess of $1,500,000 from

each operation that conducts a class II gaming or class III gaming activity; or

''(ii) a flat fee levied on the gross revenues from each operation that conducts a class II gaming or class III gaming activity.

''(C) TOTAL AMOUNT.—The total amount of all fees imposed during any fiscal year under the schedule established under subparagraph (A) shall not exceed—

''(i) $10,000,000 for each of fiscal years 2004 and 2005;

''(ii) $11,000,000 for each of fiscal years 2006 and 2007; and

''(iii) $12,000,000 for each of fiscal years 2008 and 2009.''; and

(B) by redesignating paragraphs (4) through (6) as paragraphs (2) through (4), respectively;

(2) by redesignating subsection (b) as subsection (d);

(3) in paragraph (2) of subsection (d) (as redesignated by paragraph (2)), by striking ''section 19 of this Act'' and inserting ''section 28''; and

(4) by inserting after subsection (a) the following:

''(b) FEE PROCEDURES.—

''(1) IN GENERAL.—By a vote of not less than 2 members of the Commission, the Commission shall adopt the schedule of fees provided for under this section.

''(2) FEES ASSESSED.—In assessing and collecting fees under this section, the Commission shall take into account the duties of, and services provided by, the Commission under this Act.

''(3) REGULATIONS.—The Commission shall promulgate such regulations as are necessary to carry out this subsection.

''(c) FEE REDUCTION PROGRAM.—

''(1) IN GENERAL.—In making a determination of the amount of fees to be assessed for any class II gaming or class III gaming activity under the schedule of fees under this section, the Commission may provide for a reduction in the amount of fees that otherwise would be collected on the basis of—

''(A) the extent and quality of regulation of the gaming activity provided by a State or Indian tribe, or both, in accordance with an approved State-Tribal compact;

''(B) the extent and quality of self-regulating activities covered by this Act that are conducted by an Indian tribe; and

''(C) other factors determined by the Commission, including—

''(i) the unique nature of tribal gaming as compared with commercial gaming, other governmental gaming, and charitable gaming;

''(ii) the broad variations in the nature, scale, and size of tribal gaming activity;

''(iii) the inherent sovereign rights of Indian tribes with respect to regulating the affairs of Indian tribes;

''(iv) the findings and purposes under sections 2 and 3;

''(v) the amount of interest or investment income derived from the Indian gaming regulation accounts; and

''(vi) any other matter that is consistent with the purposes under section 3.

''(2) RULEMAKING.—The Commission shall promulgate such regulations as are necessary to carry out this subsection.''.

(i) ADDITIONAL AMENDMENTS.—The Indian Gaming Regulatory Act is amended—

(1) by striking section 19 (25 U.S.C. 2718);

(2) by redesignating sections 20 through 24 (25 U.S.C. 2719 through 2723) as sections 23 through 27, respectively;

(3) by inserting after section 18 (25 U.S.C. 2717) the following:

''SEC. 19. INDIAN GAMING REGULATION ACCOUNTS.

''(a) IN GENERAL.—All fees and civil forfeitures collected by the Commission in accordance with this Act shall—

''(1) be maintained in separate, segregated accounts; and

''(2) be expended only for purposes described in this Act.

''(b) INVESTMENTS.—

''(1) IN GENERAL.—The Commission shall invest such portion of the accounts maintained under subsection (a) as are not, in the judgment of the Commission, required to meet immediate expenses.

''(2) TYPES OF INVESTMENTS.—Investments may be made only in interest-bearing obligations of the United States guaranteed as to both principal and interest by the United States.

''(c) SALE OF OBLIGATIONS.—Any obligation acquired with funds in an account maintained under subsection (a)(1) (except special obligations issued exclusively to those accounts, which may be redeemed at par plus accrued interest) may be sold by the Commission at the market price.

''(d) CREDITS TO INDIAN GAMING REGULATORY ACCOUNTS.—The interest on, and proceeds from, the sale or redemption of any obligation held in an account maintained under subsection (a)(1) shall be credited to and form a part of the account.

''SEC. 20. MINIMUM STANDARDS.

''(a) CLASS I GAMING.—Notwithstanding any other provision of law, class I gaming on Indian land—

''(1) shall remain within the exclusive jurisdiction of the Indian tribe having jurisdiction over the Indian land; and

''(2) shall not be subject to this Act.

''(b) CLASS II GAMING.—

''(1) IN GENERAL.—Subject to paragraph (2), an Indian tribe shall retain primary jurisdiction over regulation of class II gaming activities conducted by the Indian tribe.

''(2) CONDUCT OF CLASS II GAMING.—Any class II gaming activity shall be conducted in accordance with—

''(A) section 11; and

''(B) regulations promulgated under subsection (d).

''(c) CLASS III GAMING.—

''(1) IN GENERAL.—Subject to paragraph (2), an Indian tribe shall retain primary jurisdiction over regulation of class III gaming activities conducted by the Indian tribe.

''(2) CONDUCT OF CLASS III GAMING.—Any class III gaming operated by an Indian tribe under this Act shall be conducted in accordance with—

''(A) section 11; and

''(B) regulations promulgated under subsection (d).

''(d) RULEMAKING.—

''(1) IN GENERAL.—

''(A) PROMULGATION.—Not later than 180 days after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission shall develop procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate regulations relating to—

''(i) the monitoring and regulation of tribal gaming;

''(ii) the establishment and regulation of internal control systems; and

''(iii) the conduct of background investigation.

''(B) PUBLICATION OF PROPOSED REGULATIONS.—Not later than 1 year after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission shall publish in the Federal Register proposed regulations developed by a negotiated rulemaking committee in accordance with this section.

''(2) COMMITTEE.—A negotiated rulemaking committee established in accordance with section 565 of title 5, United States Code, to carry out this subsection shall be composed only of Federal and Indian tribal government representatives, a majority of whom shall be nominated by and be representative of Indian tribes that conduct gaming in accordance with this Act.

''(e) ELIMINATION OF EXISTING REGULATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), as of the date that is 1 year after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, regulations establishing minimum internal control standards promulgated by the Commission that are in effect as of the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003 shall have no force or effect.

''(2) EXCEPTION FOR AFFIRMATION OF EXISTING REGULATIONS.—Notwithstanding paragraph (1), if, before the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission certifies to the Secretary of the Interior that the Commission has promulgated regulations that establish minimum internal control standards that meet the requirements of subsection (d)(1)(A) and were developed in consultation with affected Indian tribes, the regulations shall—

''(A) be considered to satisfy the requirements of paragraph (1); and

''(B) remain in full force and effect.

''SEC. 21. USE OF NATIONAL INDIAN GAMING COMMISSION CIVIL FINES.

''(a) ACCOUNT.—Amounts collected by the Commission under section 14 shall—

''(1) be deposited in a separate Indian gaming regulation account established under section 19(d)(1)(A); and

''(2) be available to the Commission, as provided for in advance in Acts of appropriation, for use in carrying out this Act.

''(b) USE OF FUNDS.—

''(1) IN GENERAL.—The Commission may provide grants and technical assistance to Indian tribes using funds secured by the Commission under section 14.

''(2) USES.—A grant or financial assistance provided under paragraph (1) may be used only—

''(A) to provide technical training and other assistance to an Indian tribe to strengthen the regulatory integrity of Indian gaming;

''(B) to provide assistance to an Indian tribe to assess the feasibility of conducting nongaming economic development activities on Indian land;

''(C) to provide assistance to an Indian tribe to devise and implement programs and treatment services for individuals diagnosed as problem gamblers; or

''(D) to provide to an Indian tribe 1 or more other forms of assistance that are not inconsistent with this Act.

''(c) SOURCE OF FUNDS.—Amounts used to carry out subsection (b) may be derived only from funds—

''(1) collected by the Commission under section 14; and

''(2) authorized for use in advance by an Act of appropriation.

''(d) REGULATIONS.—The Commission may promulgate such regulations as are necessary to carry out this section.

''SEC. 22. TRIBAL CONSULTATION.

''In carrying out this Act, the Secretary of the Interior, Secretary of the Treasury, and Chairman of the Commission shall involve and consult with Indian tribes to the maximum extent practicable, as appropriate, in a manner that is consistent with the Federal trust and the government-to-government relationship that exists between Indian tribes and the Federal Government.''; and

(4) by inserting after section 27 (as redesignated by paragraph (2)) the following:

''SEC. 28. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—Subject to section 18, there is authorized to be appropriated to carry out this Act, for fiscal year 1998 and each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 18(a).

''(b) ADDITIONAL AMOUNTS.—Notwithstanding section 18, in addition to amounts authorized to be appropriated by subsection (a), there are authorized to be appropriated $2,000,000 to fund the operation of the Commission for fiscal year 1998 and each fiscal year thereafter.''.

By Mr. DASCHLE:

S. 1530. A bill to provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River; to the Committee on Indian Affairs.

Mr. DASCHLE. Mr. President, I am pleased to introduce the Lower Brule and Crow Creek Sioux Tribal Parity Act of 2003.

This legislation is intended to provide additional and final compensation to the Lower Brule Sioux and Crow Creek Sioux Tribes for losses from the Pick-Sloan Missouri River Basin Program, commonly known as the ''Flood Control Act of 1944''.

The Pick-Sloan Program inundated the fertile bottom land of the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribe. Congress has provided compensation to several South Dakota Indian tribes, including Lower Brule and Crow Creek, that border the Missouri River. The compensation provided, however, has not been consistent in terms of either criteria, or methodology.

Based on the methodology determined appropriate by the General Accounting Office and used by Congress to determine the compensation for the Cheyenne River Sioux Tribe, new calculations have determined that Lower Brule is entitled to additional final compensation of $137,065,558 from the United States. The Crow Creek Sioux Tribe is entitled to additional compensation of $100,244,040. The legislation I am introducing will provide parity for the Lower Brule Sioux and Crow Creek Sioux Tribes.

These two tribes are entitled to a final parity payment based upon this GAO-approved methodology. I look forward to moving ahead with this legislation for the benefit of the people of Lower Brule and Crow Creek.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1530

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tribal Parity Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Pick-Sloan Missouri River Basin Program (authorized by section 9 of the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (58 Stat. 891)), was approved to promote the general economic development of the United States;

(2) the Fort Randall and Big Bend dam and reservoir projects in South Dakota—

(A) are major components of the Pick-Sloan Missouri River Basin Program; and

(B) contribute to the national economy;

(3) the Fort Randall and Big Bend projects inundated the fertile bottom land of the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribes;

(4) Congress has provided compensation to several Indian tribes, including the Lower Brule and Crow Creek Sioux Tribes, that border the Missouri River and suffered injury as a result of 1 or more Pick-Sloan Projects;

(5) the compensation provided to those Indian tribes has not been consistent;

(6) Missouri River Indian tribes that suffered injury as a result of 1 or more Pick-Sloan Projects should be adequately compensated for those injuries, and that compensation should be consistent among the Tribes;

(7) the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe, based on methodology determined appropriate by the General Accounting Office, are entitled to receive additional compensation for injuries described in paragraph (6), so as to provide parity among compensation received by all Missouri River Indian tribes.

SEC. 3. LOWER BRULE SIOUX TRIBE.

Section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (Public Law 105–132; 111 Stat. 2565) is amended by striking ''$39,300,000'' and inserting ''$176,398,012''.

SEC. 4. CROW CREEK SIOUX TRIBE.

Section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (Public Law 104–223; 110 Stat. 3027) is amended by striking ''$27,500,000'' and inserting ''$100,244,040''.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. WARNER, Mr. BINGAMAN, Mr. ALLEN, Mr. NELSON of Nebraska, Mr. COCHRAN, Mr. LAUTENBERG, Mr. BOND, Mr. HARKIN, Mr. DOMENICI, Mr. JEFFORDS, Mr. CHAMBLISS, Mr. ROCKEFELLER, Mrs. DOLE, and Mr. BREAUX):

S. 1531. A bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall; to the Committee on Banking, Housing, and Urban Affairs.

Mr. HATCH. Mr. President, I rise today in support of S. 1531, the John Marshall Commemorative Coin Act. This bill authorizes the Treasury Department to mint and issue coins bearing the likeness of Chief Justice John Marshall for the purpose of supporting the Supreme Court Historical Society. Sales of the coin would, in addition to raising funds for the Society, also cover all of the costs of minting and issuing these coins, so that the American taxpayer would not bear any cost whatsoever if this legislation were enacted.

Justice Oliver Wendell Holmes once called John Marshall ''the great Chief Justice.'' After 34 years on the bench, from 1801–1835, Marshall earned that title by establishing many of the constitutional doctrines we revere today. Writing over 500 opinions, he truly made the third branch of government co-equal with the legislative and executive branches.

Marshall's greatness lay in his ability to figure out how to put in practice the concept of checks and balances. In powerfully written decisions, the Marshall Court established several constitutional doctrines, forming the bedrock of contemporary jurisprudence including: establishing judicial review, prohibiting State taxation of the Federal Government, making the federal supreme court final arbiter of decisions issued by State supreme courts, and expounding the limits of the contracts and commerce clauses. Indeed, he solidified early Federalist ideas by defining the relationships between the Federal Government and the States; a position that was forgotten and is only very recently re-emerging in our jurisprudence.

Born in 1755, Marshall was a key player in the founding generation who established our constitutional government. He was an early and active member in the revolutionary cause, joining with the revolutionary army and fighting as one of George Washington's Officers in at least four major battles and enduring the winter at Valley Forge. Marshall later served as a member of Congress and as Secretary of State before his ascension to the Supreme Court.

There is a no more fitting likeness for a coin that would support the efforts of the Supreme Court Historical Society. The Society is a non-profit organization whose purpose is to preserve and disseminate the history of the Supreme Court of the United States. Founded by Chief Justice Warren Burger, the Society's mission is to provide information and historical research on our Nations highest court. The Society accomplishes this mission by conducting programs, publishing books, supporting historical research and collecting antiques and artifacts related to the Court's history.

Recent research includes efforts to capture the history of the Court during the Franklin D. Roosevelt period, the Civil War, and the evolution of the Chief Justice's role on the court. Lectures and programs are open to the public as well as Society members. Additionally, the Society seeks to acquire the private papers, period furnishings, and art work relating to court history.

For all of these reasons, I urge my colleagues to join with me in this effort to memorialize the Great Chief Justice John Marshall and assist a worthwhile organization like the Supreme Court Historical Society.

Thank you, Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, I join my Judiciary Committee colleague Senator HATCH and others in introducing a bill to authorize the minting of a commemorative coin in honor of United

States Supreme Court Chief Justice John Marshall, commonly known as ''the Great Chief Justice.''

Marshall's contributions to our country have been noted by members of the executive and judicial branches. President John Quincy Adams described his father's appointment of Marshall to the Supreme Court as ''one of the most important services rendered by [his father] to his country.'' Fellow Supreme Court Justice Joseph Story described Marshall in the following terms: ''Patience, moderation, candor, urbanity, quickness of perception, dignity of deportment, gentleness of manners, genius which commands respect, and learning which justifies confidence.'' Congress' passage of the ''John Marshall Commemorative Coin Act'' in honor of the upcoming 250th anniversary of his birth would be a fitting complement to these, and other, recognitions of ''the Great Chief Justice's'' extraordinary accomplishments.

Marshall presided over the Supreme Court during the formative years of 1801–1835. Before that time, the Supreme Court played a comparatively minor role in our Federal government. Under Marshall's leadership, the Court evolved into a powerful institution and assumed its role as guardian of the Constitution, and as the arbiter of disputes between the Federal government and the States. As one legal scholar commented: ''It is not inconceivable that the Supreme Court would have remained a minor appendage of our government, and our constitutional development taken a distinctly different course, but for the fact that John Marshall occupied the Chief Justice's chair during the first three decades of the nineteenth century.''

Marshall is considered the founding father of American Constitutional law. To name just a few of Marshall's groundbreaking opinions, Marbury v. Madison the first instance in which the Supreme Court pronounced an act of Congress unconstitutional is the leading precedent for the Court's power to judge the constitutionality of legislative and executive acts. In McCulloch v. Maryland, Marshall asserted the right of the Supreme Court to decide questions involving the conflicting powers of the Federal and State governments, affirmed Congress' authority to act in furtherance of its enumerated powers, and established the standard for determining when the exercise of a Federal power limits the otherwise sovereign power of a State. In Cohens v. Virginia, Marshall established the authority of the Federal judiciary to review decisions of the highest State courts. As a final illustration of Marshall's many important judicial opinions, in Gibbons v. Ogden, he set forth Congress' power to regulate commerce among the States and with foreign nations.

Aside from the specific constitutional principles Marshall established while on the Court, he made many other important contributions to American constitutional law. For example, Marshall advocated that judges, as ultimate guardians of the Constitution, should be above politics and that the role of the Nation's courts was to mitigate the effects of factional politics. Moreover, Marshall adopted an approach to constitutional interpretation termed ''fair construction'' which struck a middle ground between an overly restrictive, and an overly broad, reading of the Constitution because he feared that strict construction would ultimately weaken the Constitution and, in due course, the Nation.

In closing, it is difficult to overstate Chief Justice Marshall's contributions to our Nation. Many years ago, when I read Marshall's opinions in my first year of law school, I admired the Chief Justice. Now, having served in Congress and worked within the principles Marshall established, I find him all the more admirable. A commemorative coin in his honor would be a fitting tribute to ''the Great Chief Justice.''

I ask unanimous consent that the text of bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1531

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the ''Chief Justice John Marshall Commemorative Coin Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) John Marshall served as the Chief Justice of the Supreme Court of the United States from 1801 to 1835, the longest tenure of any Chief Justice in the Nation's history;

(2) Under Marshall's leadership, the Supreme Court expounded the fundamental principles of constitutional interpretation, including judicial review, and affirmed national supremacy, both of which served to secure the newly founded United States against dissolution; and

(3) John Marshall's service to the nascent United States, not only as Chief Justice, but also as a soldier in the Revolutionary War, as a member of the Virginia Congress and the United States Congress, and as Secretary of State, makes him one of the most important figures in our Nation's history.

SEC. 3. COIN SPECIFICATIONS.

(a) DENOMINATION.—In commemoration of the 250th anniversary of the birth of Chief Justice John Marshall, the Secretary of the Treasury (in this Act referred to as the ''Secretary'') shall mint and issue not more than 400,000 $1 coins, each of which shall—

(1) weigh 26.73 grams;

(2) have a diameter of 1.500 inches; and

(3) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of sections 5134 and 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of Chief Justice John Marshall and his contributions to the United States.

(2) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act, there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year ''2005''; and

(C) inscriptions of the words ''Liberty'', ''In God We Trust'', ''United States of America'', and ''E Pluribus Unum''.

(b) SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary, after consultation with the Commission of Fine Arts, and the Supreme Court Historical Society; and

(2) reviewed by the Citizens Coinage Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) MINT FACILITY.—Only one facility of the United States Mint may be used to strike any particular quality of the coins minted under this Act.

(c) COMMENCEMENT OF ISSUANCE.—The Secretary may issue coins minted under this Act beginning on January 1, 2005.

(d) TERMINATION OF MINTING AUTHORITY.—No coins may be minted under this Act after December 31, 2005.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—The coins minted under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the face value of the coins;

(2) the surcharge provided in section 7 with respect to such coins; and

(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins minted under this Act at a reasonable discount.

(c) PREPAID ORDERS.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to pre-paid orders under paragraph (1) shall be at a reasonable discount.

SEC. 7. SURCHARGES.

(a) IN GENERAL.—All sales of coins minted under this Act shall include a surcharge of $10 per coin.

(b) DISTRIBUTION.—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Supreme Court Historical Society for the purposes of—

(1) historical research about the Supreme Court and the Constitution of the United States and related topics;

(2) supporting fellowship programs, internships, and docents at the Supreme Court; and

(3) collecting and preserving antiques, artifacts, and other historical items related to the Supreme Court and the Constitution of the United States and related topics.

(c) AUDITS.—The Supreme Court Historical Society shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to the amounts received by the Society under subsection (b).

SEC. 8. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that the minting and issuance of the coins referred to in section 3(a) shall result in no net cost to the Federal Government.

(b) PAYMENT FOR THE COINS.—The Secretary may not sell a coin referred to in section 3(a) unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the Federal Government for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board.

By Ms. STABENOW (for herself, Mr. ENZI, Mr. JOHNSON, Mr. HAGEL, Mr. SCHUMER, Mr. BAYH, Mr. CARPER, and Mr. CORZINE):

S. 1532. A bill to establish the Financial Literacy Commission, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Ms. STABENOW. Mr. President, I rise today to introduce the Financial Literacy Community Outreach Act of 2003. This bill, which I am proud to introduce with my colleague and friend, Mr. ENZI, is the product of several months of work. We have reached out to financial literacy advocates, financial institutions, Federal agencies, and other interested parties to craft a comprehensive bill to streamline, augment, and improve our government's approach to financial literacy.

The need for this legislation is clear. Studies show alarming shortcomings in the state of financial literacy in America. For example, in a survey of consumers 18 years and older conducted by the American Association of Retired Persons in late 1998, only 11 percent of respondents correctly answered 4 basic financial questions. A study by the Jump$tart Coalition for Personal Financial Literacy found that, in 2002, on average, high school seniors could correctly answer only about 50 percent of a set of financial answers put to them a failing grade.

In addition, from 1990 to 2000, the outstanding credit card debt among households more than tripled from $200 billion to $600 billion. And, a 2002 study by John Hancock found that, in a study it did, 50 percent of respondents said they spend half an hour or less per month managing their retirement funds.

These are all very disturbing statistics and, just a few examples of why I feel the need to act to improve our government's approach to this problem. We need a clear and effective strategy to address these problems.

The Federal Government understands that financial literacy is essential to a healthy economy and the protection of consumers. That is why many Federal departments and agencies have employed their resources and expertise to educate the public about how to accomplish such goals as realizing the dreams of homeownership, saving for a child's college education, and planning for a secure retirement. These agencies do this through grant programs, through special training, and by developing financial literacy materials.

Unfortunately, what Mr. ENZI and I, as well as others active on this issue, have come to realize is that these programs are uncoordinated and, in some places, duplicative. There is no mechanism for these agencies to interact and assess the good work they are doing. That is why, in our legislation, we set up a Federal Financial Literacy Commission.

Made up of Federal decision makers with jurisdiction over one or more financial literacy programs, including the Federal Reserve, the FDIC, the Treasury Department, the Department of Housing and Urban Development, the Securities and Exchange Commission, and the Small Business Administration, our Commission, and its constituent members, will take all necessary steps to coordinate, streamline and improve existing programs. The Commission will also make recommendations to Congress on legislation that may be needed to improve financial education.

I am pleased to say that this new Commission will operate as a nexus for all Federal financial literacy materials, grants, and information; spearhead efforts to reach out to the public with financial literacy messages; manage a toll free hotline; operate a website promoting financial literacy and highlighting Federal grants, materials, and programs; and, it may feature private and non-profit resources available to the public.

Improving the state of financial literacy is a common sense thing to do. It is something that we can do through cooperation and strategic thinking about our Federal resources. And, it can be done with the input of all concerned interests. Many people in the Senate have worked diligently on the subject of financial literacy, including Mr. SARBANES, the Ranking Member of the Banking, Housing, and Urban Affairs Committee who has done important work on this subject.

I am pleased that Mr. ENZI is the lead Republican sponsor of this legislation; he is a true leader and cares passionately about this issue. And, I appreciate the leadership of the bipartisan group of Senators who have agreed to cosponsor our bill: Mr. HAGEL, Mr. JOHNSON, Mr. SCHUMER, Mr. BAYH, Mr. CARPER, and Mr. CORZINE. I look forward to working with them and all of my other colleagues in the Senate to ensure that we have an effective, coordinated, and comprehensive Federal approach to improving financial literacy in our country.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1532

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Financial Literacy Community Outreach Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) although the evolution of our financial system has offered families in the United States many new opportunities to build wealth and security, the ready availability of credit, an overwhelming array of investment and savings options, and the shifting of responsibility for retirement savings from employer to employee has made the understanding of personal finance ever more important;

(2) many young adults within the United States have demonstrated difficulty understanding basic financial concepts;

(3) in surveys of high school seniors conducted by the JumpStart Coalition for Personal Financial Literacy—

(A) in 1997 participants, on average, failed, and answered only 57 percent of the questions correctly;

(B) in 2000, the average score fell to 51 percent; and

(C) in 2002, disturbingly, on average, only 50 percent of the questions were answered correctly;

(4) in a survey of consumers 18 years and older conducted by the American Association of Retired Persons in late 1998, only 11 percent of respondents correctly answered 4 basic financial questions;

(5) a similar survey of 800 defined benefit contribution plan participants conducted by John Hancock in 2002 found that 50 percent of respondents said they spend half an hour or less per month managing their retirement funds;

(6) households in the United States are not reaching their full potential in financial management, and as a result—

(A) the personal savings rate fell to only 1.6 percent of disposable income in 2001;

(B) from 1990 to 2000, outstanding credit card debt among households more than tripled from $200,000,000,000 to $600,000,000,000;

(C) in 2001, the total household debt exceeded total household disposable income by nearly 10 percent;

(D) less than half of all households hold stock in any form, including mutual funds and 401(k)-style pension plans; and

(E) almost half of all workers have accumulated less than $50,000 for their retirement, and ⅓ have saved less than $10,000;

(7) many Government agencies recognize that the people of the United States lack expertise in financial literacy and are working to help them, including efforts by—

(A) the Department of Labor and the Federal Deposit Insurance Corporation, which have joined together to create ''Money Smart'', a training program to help adults enhance their money-management skills;

(B) the Department of the Treasury, which has formed the ''Financial Services Education Council'', and has published a guide called ''Helping People in Your Community Understand Basic Financial Services'';

(C) the Department of the Treasury in promoting a middle school curriculum called ''Money Math: Lessons for Life'';

(D) the Federal Trade Commission, which publishes information about credit, including ''Credit Matters: How to qualify for credit, keep a good credit history, and protect your credit'';

(E) the Department of Agriculture, which runs the ''Family Economics Program'' to assist educators who deliver basic consumer education and teach personal financial management skills to young people;

(F) the Securities and Exchange Commission, which has an Office of Investor Education and Assistance;

(G) the Board of Governors of the Federal Reserve System, which has developed materials explaining how to use credit responsibly, obtain a mortgage, build wealth, and lease a car;

(H) the Department of Housing and Urban Development in funding housing counseling agencies nationwide that provide advice on how to save for and buy a home; and

(I) the Government Services Administration in hosting the Federal Consumer Information Center, which has an electronic catalogue of information about Federal financial literacy programs;

(8) there is very little coordination among Federal programs, resulting in duplication of effort and a confusing array of information spread among many agencies;

(9) there is a serious problem with financial illiteracy among many low-income consumers, who often—

(A) do not have a relationship with a mainstream financial services provider;

(B) lack experience and information about personal finance; and

(C) are ill-prepared to make informed financial decisions;

(10) many people in the United States—

(A) are in a precarious financial position because they lack an understanding of economic and financial fundamentals and of financial planning;

(B) are forgoing opportunities to build wealth by failing to target their investments to higher yielding, yet secure savings vehicles; and

(C) are failing to adequately plan and save for retirement; and

(11) financial literacy is the foundation that supports—

(A) economic independence for the citizens of the United States; and

(B) the functioning of our free market economy.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term ''Commission'' means the Financial Literacy Commission established under section 101; and

(2) the term ''financial literacy'' means basic personal income and household money management and planning skills, including—

(A) saving and investing;

(B) building wealth;

(C) managing spending, credit, and debt effectively;

(D) tax and estate planning;

(E) the ability to ascertain fair and favorable credit terms and avoid abusive, predatory, or deceptive credit offers;

(F) the ability to understand, evaluate, and compare financial products, services, and opportunities; and

(G) all other related skills.

TITLE I—FINANCIAL LITERACY COMMISSION

SEC. 101. ESTABLISHMENT OF FINANCIAL LITERACY COMMISSION.

(a) IN GENERAL.—There is established a commission to be known as the Financial Literacy Commission.

(b) PURPOSE.—The Commission shall serve to improve the financial literacy of persons in the United States by overseeing, implementing, and reporting upon the effects of the performance of the duties of the Commission set forth in section 102.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of not more than 19 members, including—

(A) the Comptroller of the Currency;

(B) the Secretary of Agriculture of the Department of Agriculture;

(C) the Secretary of Education of the Department of Education;

(D) the Secretary of Housing and Urban Development of the Department of Housing and Urban Development;

(E) the Secretary of Labor of the Department of Labor;

(F) the Secretary of the Treasury;

(G) the Chairman of the Federal Deposit Insurance Corporation;

(H) the Chairman of the Board of Governors of the Federal Reserve System;

(I) the Chairman of the Federal Trade Commission;

(J) the Administrator of General Services of the General Services Administration;

(K) the Commissioner of the Internal Revenue Service;

(L) the Chairman of the National Credit Union Administration Board;

(M) the Director of the Office of Thrift Supervision;

(N) the Chairman of the Securities and Exchange Commission;

(O) the Administrator of the Small Business Administration;

(P) the Commissioner of the Social Security Administration; and

(Q) at the discretion of the President, not more than 3 individuals appointed by the President from among the administrative heads of any other Federal agency, department, or other Government entity, whom the President believes would be helpful in implementing the purpose of the Commission.

(2) DESIGNEES.—The individuals referred to in paragraph (1) may appoint a designee from within the department or agency of that individual to serve as a member of the Commission.

(d) FEDERAL EMPLOYEE REQUIREMENT.—Each member of the Commission shall be an officer or employee of the United States.

(e) CHAIRPERSON.—The Commission shall select a Chairperson from among its members. The Secretary of the Treasury, or the designee thereof under subsection (c)(2), shall chair the initial meeting of the Commission.

(f) VICE CHAIRPERSON.—The Commission shall select a Vice Chairperson from among its members.

(g) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment or designation, as provided under subsection (c).

(h) INITIAL MEETING.—The Commission shall hold its first meeting not later than 60 days after the date of enactment of this Act.

(i) MEETINGS.—

(1) SEMIANNUAL MEETINGS.—The Commission shall hold, at the call of the Chairperson, 1 meeting every 6 months to conduct necessary business. All such meetings shall be open to the public.

(2) DISCRETIONARY MEETINGS.—The Commission may hold, at the call of the Chairperson, such other meetings as the Chairperson sees fit to carry out this Act.

(j) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(k) EXECUTIVE COMMITTEE.—

(1) IN GENERAL.—The Commission shall establish an Executive Committee comprised of—

(A) the Chairperson;

(B) the Vice Chairperson; and

(C) 3 at-large members selected by the Commission from among members appointed under subsection (c).

(2) TERM.—Members of the Executive Committee selected under paragraph (1)(C) shall serve for such time as determined by the Commission.

(3) MEETINGS.—The Executive Committee shall hold, at the call of the Chairperson, 1 meeting every 2 months to conduct necessary administrative business.

(4) QUORUM.—A majority of the members of the Executive Committee shall constitute a quorum.

SEC. 102. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—The Commission, through the authority of the members referred to in section 101(c), shall take such actions as it deems necessary to streamline, improve, or augment the financial literacy programs, materials, and grants of the Federal Government.

(b) WEBSITE.—

(1) IN GENERAL.—The Commission shall establish and maintain a website, and attempt to register the domain name ''FinancialLiteracy.gov'', or, if such domain name is not available, a similar domain name.

(2) PURPOSES.—The website established under paragraph (1) shall—

(A) serve as a clearinghouse of information about Federal financial literacy programs;

(B) provide a coordinated entry point for accessing information about all Federal publications, grants, and materials promoting enhanced financial literacy;

(C) offer information on all Federal grants to promote financial literacy, and offer information to the public on how to target, apply for, and receive a grant that is most appropriate under the circumstances;

(D) as the Commission considers appropriate, feature website links to private sector efforts, such as the JumpStart Coalition for Personal Financial Literacy, and feature information about private sector financial literacy programs, materials, or campaigns;

(E) highlight information about best practices for teaching and promoting financial literacy; and

(F) offer such other information as the Commission finds appropriate to share with the public in the fulfillment of its purpose.

(c) TOLL FREE HOTLINE.—The Commission shall establish a toll-free telephone number that shall be made available to members of the public seeking information about issues pertaining to financial literacy.

(d) DEVELOPMENT AND DISSEMINATION OF MATERIALS.—The Commission shall—

(1) develop materials to promote financial literacy; and

(2) disseminate such materials to the general public.

(e) ADMINISTRATION OF GRANT PROGRAMS.—

(1) AUTHORITY.—The Commission shall be authorized to establish and implement grant programs to promote financial literacy.

(2) ELIGIBILITY.—Grants awarded under paragraph (1) may be awarded to schools, non-profit organizations, units of general local government, faith-based organizations, and such other entities as determined eligible by the Commission.

(3) PREFERENCES.—In awarding grants under paragraph (1), the Commission shall—

(A) give preference to entities that have a demonstrated record of serving communities with people who have historically had either limited or no access to financial literacy education; and

(B) to the extent practicable, award grants to as many entities eligible under paragraph (2) as possible.

(f) INITIAL AND ANNUAL REPORTS.—

(1) INITIAL REPORT.—

(A) IN GENERAL.—Not later than 18 months after the date of the first meeting of the Commission, the Commission shall issue an initial report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the progress of the Commission in carrying out this Act.

(B) CONTENTS.—The report required under subparagraph (A) shall—

(i) identify all Federal programs, materials, and grants which seek to improve financial literacy, and assess the effectiveness of such programs; and

(ii) identify all actions that the Commission has taken to streamline, improve, or augment the financial literacy programs,

materials, and grants of the Federal Government.

(2) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than November 30 of each year, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report detailing the activities of the Commission during the preceding fiscal year, and making recommendations on ways to enhance financial literacy in the United States.

(B) CONTENTS.—The report required under subparagraph (A) shall include—

(i) information concerning the content and public use of the website established under subsection (b);

(ii) information concerning the usage of the toll-free telephone number established under subsection (c);

(iii) summaries of the financial literacy materials developed under subsection (d), and data regarding the dissemination of such materials;

(iv) information about the activities of the Commission planned for the next fiscal year;

(v) a summary of all Federal efforts to reach out to communities that have historically lacked access to financial literacy materials and education; and

(vi) such other materials relating to the duties of the Commission as the Commission deems appropriate.

(g) PERIODIC STUDIES.—The Commission may conduct periodic studies regarding the state of financial literacy in the United States, as the Commission determines appropriate.

SEC. 103. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) ADVISORY COMMITTEES.—The Commission shall establish not fewer than 1 advisory committee, consisting of representatives of lending institutions, financial literacy nonprofit organizations, consumer advocates, State and local governments, and such other individuals that the Commission believes could contribute to the work of the Commission.

(c) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 104. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall serve without compensation in addition to that received for their service as an officer or employee of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Commission may, without regard to civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by members of the Commission.

(2) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(4) TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 105. TERMINATION.

The Commission shall terminate on September 30, 2013.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this Act, including administrative expenses of the Commission.

Mr ENZI. Mr. President, the U.S. economy is still the greatest economy in the world and our credit markets have helped to make that happen. During the past decade, our credit markets have taken advantage of technology and innovation in order to provide more consumers with more timely credit approvals and with more financing options. Nowhere is there a better example of this than our housing market.

Today, the time it takes to review a mortgage application and approve it has been cut drastically by our financial institutions. Consumers find that they have a wide array of financing options they can choose from to secure the purchase of a home—from fixed-rated loans to variable-rate loans, or even adjustable rate loans. While the wide variety of choices has helped more families to purchase homes in the past decade, even more families could buy homes if they understood how the credit market works.

Although there are many pluses to the expansion of the availability of credit there is also a downside. Individuals may get in over their heads when too much credit is made available to them. In addition, identity theft is a bigger problem than it has been before. Consumers need to educate themselves about the potential problems they might face and how to avoid them. Increasing consumer financial literacy is not just about providing information, however, it is about giving families the proper informational tools so that they can put their financial affairs in order.

Today, my friend and colleague, Senator STABENOW and I are introducing the ''Financial Literacy Community Outreach Act'' to help to bring together all of the federal government's financial literacy programs under one roof.

The Department of Treasury, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Securities and Exchange Commission, the Department of Housing and Urban Development, and the Department of Labor are just a few of the many federal agencies that have established excellent financial literacy programs and initiatives. These programs cover a wide variety of topics ranging from how to save, spend, and invest to programs that provide guidance on how to prepare for retirement, select a pension plan, or purchase a home. Still others help individuals avoid the threat of identity theft.

Unfortunately, consumers attempting to find financial literacy information from the federal government may find that information scattered throughout the government. Our bill would provide a one-stop-shop where consumers could find the appropriate financial literacy programs for their needs. A single web site and a toll-free number will go a long way toward bringing this vital information to the individuals and families who need it.

In addition, the bill establishes the Financial Literacy Commission, a body comprised of the heads of the federal agencies with financial literacy programs. The Commission will ensure that the federal government has a cohesive and coordinated federal policy on financial literacy as it provides Congress with vital information on what can be improved in our government's financial literacy outreach efforts. In addition to the web site and the toll-free number, the Commission will highlight successful public/private partnerships already existing around the country.

One such partnership is thriving in my home state of Wyoming. The Wyoming Partners in HomeBuyer Education, led by the Wyoming Community Development Authority, includes local banks, real estate agents, the University of Wyoming, the U.S. Department of Agriculture, the U.S. Department of Housing and Urban Development, and Fannie Mae, in the effort to provide distance learning to potential home-buyers through the use of compressed video technology. This training program is perfect for a state like Wyoming in that home-buyers in rural communities have access to all of the essential elements of the home buying experience just like their urban community counterparts.

To date, more than 3,000 individuals have completed the training program and it has led to making the home-buying process easier and more understandable for rural and urban families alike.

I strongly believe that this bill will help millions of families find the appropriate financial literacy materials they need to make better credit and investment decisions.

It is my pleasure to be cosponsoring this bill with Senator STABENOW because of our shared concern about making financial literacy available to more families across the country. In addition, I would like to recognize Senator SARBANES' tremendous effort to focus our attention on financial literacy, both when he was Chairman of the Committee on Banking, Housing and Urban Affairs last year and as Ranking Member of the Committee this year. He has been an extraordinary advocate for this important issue. Chairman SHELBY of the Committee has also recognized the importance of this issue, as just this week, it was the subject of a hearing by the Committee. I look forward to working with my colleagues on the Committee and in the full Senate to ensure that we expand and build upon the government's present financial literacy efforts to help individuals and families increase their knowledge of and access to our credit and investment markets.

By Ms. CANTWELL (for herself and Mr. ENZI):

S. 1533. A bill to prevent the crime of identity theft, mitigate the harm to individuals throughout the Nation who have been victimized by identity theft, and for other purposes; to the Committee on the Judiciary.

Ms. CANTWELL. Mr. President, I rise today to re-introduce legislation critical to helping victims of identity theft. This legislation, the Identity Theft Victims Assistance Act, passed the Senate by unanimous consent in the 107th Congress, and I look forward to its passage again this Congress. Last year, the legislation had strong bipartisan support, as evidenced by the fact that Senator MIKE ENZI is cosponsoring it again. The bill has broad support from law enforcement, consumers' groups, and privacy advocates. Last year, the National Center for the Victims of Crime, the Fraternal Order of Police, Consumers Union, Identity Theft Resource Center, U.S. Public Interest Group, Police Executive Forum, Privacy Rights Clearinghouse, and Amazon.com supported the bill. Twenty-two state Attorneys General signed a letter supporting the legislation.

Identity theft is the fastest-growing crime in the country. The Federal Trade Commission found that complaints of identity theft increased 87 percent between 2001 and 2002, and over 161,000 complaints were received by the agency last year. A July 2003 study by Gartner Inc. found that there was a 79 percent increase in identity theft in the past year alone. Identity theft now accounts for 43 percent of consumer fraud complaints and leads the list of consumer frauds. It is an insidious crime because it often occurs without the victim's knowledge, yet leaves scars on their credit records and reputations that can last for years, and cost thousands of dollars to repair.

The Secret Service has estimated that consumers lose $745 million to the problem each year, and this number is clearly growing as the number of identity thefts increases. When a victim realizes that his or her identity was stolen it's just the beginning of their troubles. The FTC estimates that it costs the average victim $1,000 in long-distance phone calls, notary charges, mailing costs and lost wages to get his or her financial life back in order after an identity thief strikes. The Identity Theft Resources Center estimates that average identity theft victims spend 175 hours to clear their records.

But the costs are not confined to consumers—identity theft hits businesses and the economy, too. Identity theft-related losses suffered by MasterCard and Visa jumped from $79.9 million in 1996 to $144.3 million in 2000. One study estimates that by 2006 identity theft will cost the financial institution sector alone $8 billion per year.

To take just one of many examples from my state, Jenni D'Avis of Mill Creek, Washington, had her Social Security number stolen when a thief took her mail and found the number listed on a letter from her community college. The criminal used the number to obtain a state identification card, and in turn used that to get credit. In just 23 days, the thief ran up $100,000 in bad debt—all in Jenni's name. Once she became aware of the problem, she had to become a ''Nancy Drew,'' and track down information. Businesses were reluctant to give her the information she needed to determine the extent of the problem and clear her name and credit record. She is still repairing the damage.

Sadly, Jenni's story is not unique. Victims of identity theft have difficulty restoring their credit and regaining control of their identity, in part, because they have no simple means to show creditors and credit reporting agencies that they are who they say they are. In order to prove fraud, a victim often needs copies of creditors records, such as applications and information, and records from the companies the identity thief did business with. Ironically, victims have difficulty obtaining these business records because the victim's personal identifying information does not match the information on file with the business.

This bill fixes that problem. The Identity Theft Victims Assistance Act creates a standardized national process for a person to establish he or she is a victim of identity theft for purposes of tracing fraudulent credit transactions and obtaining the evidence to repair them. It requires the Federal Trade Commission to make available a simple certificate that, when notarized, provides certainty to businesses and financial institutions that the person is who they claim to be, is a victim of identity theft, and has filed claims with both local law enforcement and the FTC. With this document in hand, the victim can then obtain from businesses the records they need.

The need for a national system is readily apparent, as identity theft is increasingly a crime that crosses state lines. One of the greatest challenges identity theft presents to law enforcement is that a stolen identity is used to create false identities in many different localities in different states. Although identity theft is a federal crime, most often, state and local law enforcement agencies are responsible for investigating and prosecuting the crimes. Yet law enforcement has yet to fully recognize the serious nature of the problem or to develop a coordinated investigative strategy. For example, in the case of Michael Calip of Centralia, Washington, identity thieves not only ran up $60,000 in debts, they also committed crimes using his name—trashing his credit record and creating a criminal record. Michael tracked the thieves to Wyoming, but had difficulty convincing local authorities there to pursue his case.

My bill for the first time also permits a victim to designate the investigating agency, either local or state law enforcement or federal investigators, to act as their agents in obtaining evidence of identity theft. This both eases the burden on the victim and aids police in investigating suspected identity theft rings. In addition it requires the existing Identity Theft Coordinating Committee to consult with state and local law enforcement agencies.

Acquiring the evidence of the fraudulent use of identity currently can be an enormous and time-consuming problem for victims. The Identity Theft Victims Assistance Act makes this job easier by establishing that any business presented with the FTC certificate identifying the person as a victim of identity theft, together with a police report and a government issued photo ID must deliver copies of all the financial records that document the fraud to the victim within 20 days. This is a critically important change from current law because it guarantees that victims will be able to obtain the evidence they need while also providing businesses more certainty that they are not violating someone's privacy or providing sensitive information to the wrong parties. It also provides new liability protections for businesses that make a good faith effort to assist victims of identity theft.

Of course, the greatest harm to consumers victimized by theft of their identity is often a bad credit rating or a poor credit score that results from fraudulent use of the consumer's identity. According to the FTC, it often takes about a year for people to discover someone is using personal information for fraudulent purposes, allowing significant damage to otherwise stellar credit records. Even after a consumer reports to a credit reporting agency that they have been victimized by identity theft, the consumer often can not get the reporting agencies to block reporting of activities that resulted from the identity theft.

My bill again requires that presentation of the FTC certificate, police report and photo identification establish that the person is in fact a victim of identity theft and requires credit-reporting agencies to block information that appears on a victim's credit report as a result of the identity theft. It also changes current law that requires individuals to bring suit against a credit reporting agency within two years from the time the agency commits a violation of laws on fair reporting of credit. This makes little sense, since it may be years before a misrepresentation comes to the attention of a victim of identity theft. The bill requires that the statute of limitations begin ticking from the time when a consumer discovers or has reason to know that a misrepresentation by a credit reporting agency has occurred.

The bill leaves in place state laws that are more stringent and provides that either federal prosecutors or State Attorneys General may enforce this law.

Jenni and Michael's stories illustrate the unique problems victims of identity theft face. Although penalties exist for identity thieves, no remedies are available for their victims. The scope of the problem is made worse because it's too easy for a criminal to steal someone's identity and cause serious harm before the theft is even discovered. And when these criminals cross state lines, it can be even harder for victims to trace the problem and repair the damage. For these reasons, it's imperative that we pass federal legislation for the victims of identity theft.

The government, creditors and credit reporting agencies have a shared responsibility to assist identity theft victims mitigate the harm that results from frauds perpetrated in the victim's name. We need to build up the law enforcement network, already started by the Federal Trade Commission and other federal agencies under the Identity Theft and Assumption Deterrence Act of 1998. We need to further improve law enforcement coordination, particularly between the various local and state jurisdictions combating identity theft and the associated crimes.

We also need to provide better and timelier information to businesses so they can head off fraud before it happens. That is why my bill also expands the jurisdiction of the interagency coordinating committee established under the Internet False Identification Act of 2000. Currently, the coordination committee has the mandate to study and report to Congress on federal investigation and enforcement of identity theft crimes. The Identity Theft Victims Assistance Act broadens the mandate for the coordinating committee to consider state and local enforcement of identity theft law and specifically requires the committee to examine and recommend what assistance the federal government can provide state and local law enforcement agencies to better coordinate in the battle against identity theft.

Mr. President, there is no doubt about the scope of the problem: identity theft is already a major problem, and it's getting worse. We must provide victims with the tools they need to regain control of their lives. The Identity Theft Victims Assistance of 2003 will help victims of identity theft recover their identity and restore their good credit. I look forward to working with my colleagues to promptly enact this bill into law.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1533

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Identity Theft Victims Assistance Act of 2003''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The crime of identity theft is the fastest growing crime in the United States. According to a recent estimate, 7,000,000 Americans were victims of identity theft in the past year, a 79 percent increase over previous estimates.

(2) Stolen identities are often used to perpetuate crimes in many cities and States, making it more difficult for consumers to restore their respective identities.

(3) Identity theft cost consumers more than $745,000,000 in 1998 and has increased dramatically in the last few years. The credit card industry alone lost an estimated $144.3 million in 2000.

(4) Identity theft is ruinous to the good name and credit of consumers whose identities are misappropriated, and consumers may be denied otherwise deserved credit and may have to spend enormous time, effort, and money to restore their respective identities.

(5) Victims are often required to contact numerous Federal, State, and local law enforcement agencies and creditors over many years as each event of fraud arises.

(6) As of the date of enactment of this Act, a national mechanism does not exist to assist identity theft victims to obtain evidence of identity theft, restore their credit, and regain control of their respective identities.

(7) Victims of identity theft need a nationally standardized means of—

(A) establishing their true identities and claims of identity theft to all business entities, credit reporting agencies, and Federal and State law enforcement agencies;

(B) obtaining information documenting fraudulent transactions from business entities;

(C) reporting identity theft to consumer credit reporting agencies.

(8) One of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes.

(9) Law enforcement, business entities, credit reporting agencies, and government agencies have a shared responsibility to assist victims of identity theft to mitigate the harm caused by any fraud perpetrated in the name of the victims.

SEC. 3. TREATMENT OF IDENTITY THEFT MITIGATION.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding after section 1028 the following:

''§ 1028A. Treatment of identity theft mitigation

''(a) DEFINITIONS.—As used in this section—

''(1) the term 'business entity' means any corporation, trust, partnership, sole proprietorship, or unincorporated association, including any financial service provider, financial information repository, creditor (as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), telecommunications, utilities, or other service provider;

''(2) the term 'consumer' means an individual;

''(3) the term 'financial information' means information identifiable as relating to an individual consumer that concerns the amount and conditions of the assets, liabilities, or credit of the consumer, including—

''(A) account numbers and balances;

''(B) nonpublic personal information, as that term is defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

''(C) codes, passwords, social security numbers, tax identification numbers, State identifier numbers issued by a State department of licensing, and other information used for the purpose of account access or transaction initiation;

''(4) the term 'financial information repository' means a person engaged in the business of providing services to consumers who have a credit, deposit, trust, stock, or other financial services account or relationship with that person;

''(5) the term 'identity theft' means a violation of section 1028 or any other similar provision of applicable Federal or State law;

''(6) the term 'means of identification' has the same meaning given the term in section 1028;

''(7) the term 'victim' means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer with the intent to commit, or with the intent to aid or abet, an identity theft; and

''(8) the terms not defined in this section or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

''(b) INFORMATION AVAILABLE TO VICTIMS.—

''(1) IN GENERAL.—A business entity that possesses information relating to an alleged identity theft, or that has entered into a transaction, provided credit, provided, for consideration, products, goods, or services, accepted payment, otherwise entered into a commercial transaction for consideration with a person that has made unauthorized use of the means of identification of the victim, or possesses information relating to such transaction, shall, not later than 20 days after the receipt of a written request by the victim, meeting the requirements of subsection (c), provide, without charge, a copy of all application and business transaction information related to the transaction being alleged as an identity theft to—

''(A) the victim;

''(B) any Federal, State, or local governing law enforcement agency or officer specified by the victim in such a request; or

''(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this section.

''(2) RULE OF CONSTRUCTION.—

''(A) IN GENERAL.—No provision of Federal or State law prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this section.

''(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this section permits a business entity to disclose information that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

''(c) VERIFICATION OF IDENTITY AND CLAIM.—Unless a business entity, at its discretion, is otherwise able to verify the identity of a victim making a request under subsection (b)(1), the victim shall provide to the business entity—

''(1) as proof of positive identification, at the election of the business entity—

''(A) the presentation of a government-issued identification card;

''(B) if providing proof by mail, a copy of a government-issued identification card; or

''(C) upon the request of the person seeking business records, the business entity may inform the requesting person of the categories of identifying information that the unauthorized person provided the business entity as personally identifying information, and may require the requesting person to provide identifying information in those categories; and

''(2) as proof of a claim of identity theft, at the election of the business entity—

''(A) a copy of a police report evidencing the claim of the victim of identity theft;

''(B) a properly completed copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

''(C) any properly completed affidavit of fact that is acceptable to the business entity for that purpose.

''(d) LIMITATION ON LIABILITY.—No business entity may be held liable for a disclosure, made in good faith and reasonable judgment, to provide information under this section with respect to an individual in connection with an identity theft to other business entities, law enforcement authorities, victims, or any person alleging to be a victim, if—

''(1) the business entity complies with subsection (c); and

''(2) such disclosure was made—

''(A) for the purpose of detection, investigation, or prosecution of identity theft; or

''(B) to assist a victim in recovery of fines, restitution, rehabilitation of the credit of the victim, or such other relief as may be appropriate.

''(e) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under subsection (b) if, in the exercise of good faith and reasonable judgment, the business entity determines that—

''(1) this section does not require disclosure of the information;

''(2) the request for the information is based on a misrepresentation of fact by the victim relevant to the request for information; or

''(3) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

''(f) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this section creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

''(g) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this section, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

''(1) the business entity has made a reasonable diligent search of its available business records; and

''(2) the records requested under this section do not exist or are not available.

''(h) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to provide a private right of action or claim for relief.

''(i) ENFORCEMENT.—

''(1) INJUNCTIVE ACTIONS BY THE ATTORNEY GENERAL.—

''(A) IN GENERAL.—Whenever it appears that a business entity to which this section applies has engaged, is engaged, or is about to engage, in any act or practice constituting a violation of this section, the Attorney General of the United States may bring a civil action in an appropriate district court of the United States to—

''(i) enjoin such act or practice;

''(ii) enforce compliance with this section; and

''(iii) obtain such other equitable relief as the court determines to be appropriate.

''(B) OTHER INJUNCTIVE RELIEF.—Upon a proper showing in the action under subparagraph (A), the court shall grant a permanent injunction or a temporary restraining order without bond.

''(2) ADMINISTRATIVE ENFORCEMENT.—

''(A) FEDERAL TRADE COMMISSION.—

''(i) IN GENERAL.—Except to the extent that administrative enforcement is specifically committed to another agency under subparagraph (B), a violation of this section shall be deemed an unfair or deceptive act or practice in violation of the Federal Trade Commission Act (15 U.S.C. 41 et seq.), for purposes of the exercise by the Federal Trade Commission of its functions and powers under that Act.

''(ii) AVAILABLE FUNCTIONS AND POWERS.—All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this section.

''(B) OTHER FEDERAL AGENCIES.—Compliance with any requirements under this section may be enforced—

''(i) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818)—

''(I) by the Office of the Comptroller of the Currency, with respect to national banks, and Federal branches and Federal agencies of foreign banks (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

''(II) by the Board of Governors of the Federal Reserve System, with respect to member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.);

''(III) by the Board of Directors of the Federal Deposit Insurance Corporation, with respect to banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

''(IV) by the Director of the Office of Thrift Supervision, with respect to savings associations, the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

''(ii) by the Board of the National Credit Union Administration, under the Federal Credit Union Act (12 U.S.C. 1751 et seq.), with respect to any federally insured credit union, and any subsidiaries of such credit union;

''(iii) by the Securities and Exchange Commission, under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), with respect to any broker or dealer;

''(iv) by the Securities and Exchange Commission, under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), with respect to investment companies;

''(v) by the Securities and Exchange Commission, under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), with respect to investment advisers registered with the Commission under such Act;

''(vi) by the Secretary of Transportation, under subtitle IV of title 49, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

''(vii) by the Secretary of Transportation, under part A of subtitle VII of title 49, with respect to any air carrier or any foreign air carrier subject to that part; and

''(viii) by the Secretary of Agriculture, under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), except as provided in section 406 of that Act (7 U.S.C. 226, 2271), with respect to any activities subject to that Act.

''(C) AGENCY POWERS.—

''(i) IN GENERAL.—A violation of any requirement imposed under this section shall be deemed to be a violation of a requirement imposed under any Act referred to under subparagraph (B), for the purpose of the exercise by any agency referred to under subparagraph (B) of its powers under any such Act.

''(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a Federal agency from exercising the powers conferred upon such agency by Federal law to—

''(I) conduct investigations;

''(II) administer oaths or affirmations; or

''(III) compel the attendance of witnesses or the production of documentary or other evidence.

''(3) PARENS PATRIAE AUTHORITY.—

''(A) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been, or is threatened to be, adversely affected by a violation of this section by any business entity, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

''(i) enjoin that practice;

''(ii) enforce compliance with this section;

''(iii) obtain damages—

''(I) in the sum of actual damages, restitution, and other compensation on behalf of the affected residents of the State; and

''(II) punitive damages, if the violation is willful or intentional; and

''(iv) obtain such other equitable relief as the court may consider to be appropriate.

''(B) NOTICE.—Before filing an action under subparagraph (A), the attorney general of the State involved shall, if practicable, provide to the Attorney General of the United States, and where applicable, to the appropriate Federal agency with the authority to enforce this section under paragraph (2)—

''(i) a written notice of the action; and

''(ii) a copy of the complaint for the action.

''(4) INTERVENTION.—

''(A) IN GENERAL.—On receiving notice of an action under paragraph (3), the Attorney

General of the United States, and any Federal agency with authority to enforce this section under paragraph (2), shall have the right to intervene in that action.

''(B) EFFECT OF INTERVENTION.—Any person or agency under subparagraph (A) that intervenes in an action under paragraph (2) shall have the right to be heard on all relevant matters arising therein.

''(C) SERVICE OF PROCESS.—Upon the request of the Attorney General of the United States or any Federal agency with the authority to enforce this section under paragraph (2), the attorney general of a State that has filed an action under this section shall, pursuant to rule 4(d)(4) of the Federal Rules of Civil Procedure, serve the Attorney General of the United States or the head of such Federal agency, with a copy of the complaint.

''(5) CONSTRUCTION.—For purposes of bringing any civil action under this subsection, nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

''(A) conduct investigations;

''(B) administer oaths or affirmations; or

''(C) compel the attendance of witnesses or the production of documentary and other evidence.

''(6) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—In any case in which an action is instituted by or on behalf of the Attorney General of the United States, or appropriate Federal regulator authorized under paragraph (2), for a violation of this section, no State may, during the pendency of that action, institute an action under this section against any defendant named in the complaint in that action for such violation.

''(7) VENUE; SERVICE OF PROCESS.—

''(A) VENUE.—Any action brought under this subsection may be brought in the district court of the United States—

''(i) where the defendant resides;

''(ii) where the defendant is doing business; or

''(iii) that meets applicable requirements relating to venue under section 1391 of title 28.

''(B) SERVICE OF PROCESS.—In an action brought under this subsection, process may be served in any district in which the defendant—

''(i) resides;

''(ii) is doing business; or

''(iii) may be found.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following new item:

''1028A. Treatment of identity theft mitigation.''.

SEC. 4. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT.

(a) CONSUMER REPORTING AGENCY BLOCKING OF INFORMATION RESULTING FROM IDENTITY THEFT.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681*i*) is amended by adding at the end the following:

''(e) BLOCK OF INFORMATION RESULTING FROM IDENTITY THEFT.—

''(1) BLOCK.—Except as provided in paragraphs (4) and (5) and not later than 30 days after the date of receipt of—

''(A) proof of the identity of a consumer; and

''(B) an official copy of a police report evidencing the claim of the consumer of identity theft,

a consumer reporting agency shall block the reporting of any information identified by the consumer in the file of the consumer resulting from the identity theft, so that the information cannot be reported.

''(2) REINVESTIGATION.—A consumer reporting agency shall reinvestigate any information that a consumer has requested to be blocked under paragraph (1) in accordance with the requirements of subsections (a) through (d).

''(3) NOTIFICATION.—A consumer reporting agency shall, within the time period specified in subsection (a)(2)(A)—

''(A) provide the furnisher of the information identified by the consumer under paragraph (1) with the information described in subsection (a)(2); and

''(B) notify the furnisher—

''(i) that the information may be a result of identity theft;

''(ii) that a police report has been filed;

''(iii) that a block has been requested under this subsection; and

''(iv) of the effective date of the block.

''(4) AUTHORITY TO DECLINE OR RESCIND.—

''(A) IN GENERAL.—A consumer reporting agency may at any time decline to block, or may rescind any block, of consumer information under this subsection if—

''(i) in the exercise of good faith and reasonable judgment, the consumer reporting agency finds that—

''(I) the block was issued, or the request for a block was made, based on a misrepresentation of fact by the consumer relevant to the request to block; or

''(II) the consumer knowingly obtained possession of goods, services, or money as a result of a transaction for which a block has been requested, or the consumer should have known that the consumer obtained possession of goods, services, or money as a result of a transaction for which a block has been requested; or

''(ii) the consumer agrees that the blocked information or portions of the blocked information were blocked in error.

''(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified, in the same manner and within the same time period as consumers are notified of the reinsertion of information under subsection (a)(5)(B).

''(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the transaction that was blocked.

''(5) EXCEPTION.—A consumer reporting agency shall not be required to comply with this subsection when such agency is issuing information for authorizations, for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment, based solely on negative information, including—

''(A) dishonored checks;

''(B) accounts closed for cause;

''(C) substantial overdrafts;

''(D) abuse of automated teller machines; or

''(E) other information which indicates a risk of fraud occurring.''.

(b) FALSE CLAIMS.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

''(j) Any person who knowingly falsely claims to be a victim of identity theft for the purpose of obtaining the blocking of information by a consumer reporting agency under section 611(e)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681*i*(e)(1)) shall be fined under this title, imprisoned not more than 3 years, or both.''.

(c) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended to read as follows:

''SEC. 618. JURISDICTION OF COURTS; LIMITATION ON ACTIONS.

''(a) IN GENERAL.—Except as provided in subsections (b) and (c), an action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than 2 years from the date of the defendant's violation of any requirement under this title.

''(b) WILLFUL MISREPRESENTATION.—In any case in which the defendant has materially and willfully misrepresented any information required to be disclosed to an individual under this title, and the information misrepresented is material to the establishment of the liability of the defendant to that individual under this title, an action to enforce a liability created under this title may be brought at any time within 2 years after the date of discovery by the individual of the misrepresentation.

''(c) IDENTITY THEFT.—An action to enforce a liability created under this title may be brought not later than 5 years from the date of the defendant's violation if—

''(1) the plaintiff is the victim of an identity theft; or

''(2) the plaintiff—

''(A) has reasonable grounds to believe that the plaintiff is the victim of an identity theft; and

''(B) has not materially and willfully misrepresented such a claim.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect 2 years from the date of enactment of this Act.

SEC. 5. COORDINATING COMMITTEE STUDY OF COORDINATION BETWEEN FEDERAL, STATE, AND LOCAL AUTHORITIES IN ENFORCING IDENTITY THEFT LAWS.

(a) MEMBERSHIP; TERM.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) in subsection (b), by striking ''and the Commissioner of Immigration and Naturalization'' and inserting ''the Commissioner of Immigration and Naturalization, the Chairman of the Federal Trade Commission, the Postmaster General, and the Commissioner of the United States Customs Service,''; and

(2) in subsection (c), by striking ''2 years after the effective date of this Act.'' and inserting ''on December 28, 2005.''.

(b) CONSULTATION.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d) CONSULTATION.—In discharging its duties, the coordinating committee shall consult with interested parties, including State and local law enforcement agencies, State attorneys general, representatives of business entities (as that term is defined in section 4 of the Identity Theft Victims Assistance Act of 2003), including telecommunications and utility companies, and organizations representing consumers.''.

(c) REPORT DISTRIBUTION AND CONTENTS.—Section 2(e) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) (as redesignated by subsection (b)) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury, at the end of each year of the existence of the coordinating committee, shall report on the activities of the coordinating committee to—

''(A) the Committee on the Judiciary of the Senate;

''(B) the Committee on the Judiciary of the House of Representatives;

''(C) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(D) the Committee on Financial Services of the House of Representatives.'';

(2) in subparagraph (E), by striking ''and'' at the end; and

(3) by striking subparagraph (F) and inserting the following:

''(F) a comprehensive description of Federal assistance provided to State and local law enforcement agencies to address identity theft;

''(G) a comprehensive description of coordination activities between Federal, State, and local law enforcement agencies that address identity theft; and

''(H) recommendations in the discretion of the President, if any, for legislative or administrative changes that would—

''(i) facilitate more effective investigation and prosecution of cases involving—

''(I) identity theft; and

''(II) the creation and distribution of false identification documents;

''(ii) improve the effectiveness of Federal assistance to State and local law enforcement agencies and coordination between Federal, State, and local law enforcement agencies; and

''(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of such person.''.

Mr. ENZI. Mr. President, every morning, from the time we wake up to the time we turn out the lights and go to sleep, we all spend a good portion of our day in cyberspace. Probably without thinking, each time we head out to the internet, we broadcast some very specific information about our lives as we use our computers for email. Each time we use our cell phones we rely on a sense of privacy about the information we convey, which may not be present. And, when we use hand held devices to send quick messages back and forth to friends, coworkers and family we assume no one else is listening or receiving our information, which often includes social security numbers, family names and even credit card and pin numbers.

Cyberspace is a high tech criminal's dream and it has helped contribute to the fastest growing crime in America—identity theft.

Simply put, identity theft is the ability to impersonate someone else and steal their credit, their money and even their identity for their own use.

Although the use of high-tech devices has certainly contributed to the proliferation of identity theft, many individuals have been victimized by simple criminals who have carefully picked through trash cans and mailboxes to find old receipts and social security numbers. Regardless of the medium through which the information is collected, identity theft is the result of criminals who have learned how to manipulate a growing network of information—some public, some private—and then use that data to their own advantage.

The problem with identity theft is that it is not confined to one state. It affects Americans from every walk of life from coast to coast. Some Americans may discover that someone else has been using their social security number to obtain fraudulent employment, while others learn that people have been using fraudulent identification cards to obtain lines of credit and then leaving innocent victims to deal with the bills they left behind.

People from small States like Wyoming are not immune to this new crime wave. Although there are only 493,000 people in Wyoming, we have the same rate of identity theft per capita as is present anywhere else in the United States. That is why we have to approach this issue from every angle, taking a systemic approach that includes prevention, enforcement and assistance to victims of identity theft.

Today, we will take the first step with victim's assistance for this crime. I believe we have to provide some real options for our constituents who are trying to recover from the trauma that identity theft has caused in their lives. That is why my colleague from Washington and I are introducing legislation that will make it easier for victims to get the information they need to begin reversing the damage and lasting effects of this crime. Our bill, the Identity Theft Victim's Assistance Act of 2003, is very similar to a bill we offered last year that passed the Senate unanimously in November. I expect and hope for the same result this year since this is a growing problem and the need for action on this issue grows more urgent with each passing day.

Our bill includes key provisions that would allow victims to work with businesses to obtain information related to cases of identity theft and then contact credit reporting agencies to block false information on credit reports. In drafting this legislation we worked with all of the stakeholders to ensure a balance between the needs of consumers and the needs of small businesses, banks and other credit agencies.

The reintroduction of this bill is timely given the recent hearings in the Senate Banking and Commerce Committees and recent action by both the House and Administration.

Earlier this month, the House Financial Services Subcommittee reported a bill called the Fair and Accurate Credit Transactions Act. Also known as the FACT Act, the bill includes a provision nearly identical to Section 4 of our bill. Section 4 of our bill requires consumer credit reporting agencies to block information that appears on a victim's credit report as a result of identity theft, provided the victim did not knowingly obtain goods, services or money as a result of the blocked transaction.

Our provision, which amends the Fair Credit Reporting Act, was also addressed in a recent hearing before the Senate Banking Committee. On July 10, the Chairman of the Federal Trade Commission testified that ''blocking would mitigate the harm to consumers' credit record that can result from identity theft'' and recommended that this practice be codified.

I am also encouraged by similar recommendations from the Treasury Department that would require credit reporting agencies to cease reporting allegedly fraudulent account information on consumer reports when the consumer submits a police report or similar document, unless there is a reason to believe the report is false.

Providing consumers with the tools necessary to recover from identity theft is the first step in providing real relief to the hundreds of thousands of individuals whose lives have already been turned upside down by identity theft. I urge my colleagues to work with me as we move forward on this important issue and make progress on the reauthorization of critical legislation like the Fair Credit Reporting Act. We must take action this year before the crime of identity theft hurts the hundreds of thousands of working people and families who are expected to become victims this year.

By Mr. REID:

S. 1534. A bill to limit the closing and consolidation of certain post offices in rural communities, and for other purposes; to the Committee on Governmental Affairs.

Mr. REID. Mr. President, I am pleased today to introduce the Rural Post Office and Community Preservation Act of 2003.

My legislation would prohibit the Postal Service from closing post offices in our Nation's small rural communities. Where the Postal Service has closed a rural post office, my legislation directs the Postal Service to provide a plan for the rehabilitation and economic development of such closed offices in consultation with the local community affected. It also authorizes $10 million in grants to local communities to assist in such rehabilitation. Finally, it provides that the Postal Service shall transfer the closed post office in Ely, NV, to White Pine County for such rehabilitation.

All across the Nation, the Postal Service is closing, consolidating, and moving post offices in our rural communities. Oftentimes, the Postal Service sells off centrally located and in many cases historic post offices in favor of moving the office to cheaper land on the outskirts of town. While this may result in a short-term economic gain to the Postal Service, there is both an immediate and long-term negative impact on the community.

A 1993 study by the National Trust for Historic Preservation tells us what we intuitively already know. That is, in rural communities, the post office is often the economic and social anchor of the town. When post offices are closed in our rural communities, nearby businesses suffer and the small-town character of the community is diminished.

Nevada knows the harm caused by closing rural post offices first hand.

Take the small town of Ely, NV, where roughly 3,700 Nevadans make their home. Located in northeastern Nevada, Ely is a charming small town surrounded by beautiful mountains and the cleanest air in America. Decades ago, Ely was a main stopover for public officials and movie stars alike as they traveled through the West, and was briefly the hometown of Pat Ryan who later became Pat Nixon, the First Lady of the United States, At the time, Ely's six-story Hotel Nevada was the tallest structure in the whole State of Nevada. Near the Hotel Nevada, Ely had a quaint post office that helped form the center of town. Today if you go to Ely, you will still find the Hotel Nevada. The mountains are just as beautiful. But you won't find the Ely Post Office in the center of town. Last year, over my objection and the objection of the people of Ely, the Postal Service closed the office.

My legislation introduced today would help prevent future rural post office closings like the one in Ely. It would also give the closed post office in Ely to the local community.

My legislation is not intended to be a criticism of the Postal Service. Many fine men and women work there. In fact, my bill is really a testament to the importance of our post offices and the Postal Service. It recognizes that over the history of our Nation, post offices have come to symbolize and offer more than just the practical service of keeping people in touch with friends and families in distant locales. Increasingly, the local post office has become the heart of the community, a place where people within small rural communities keep in touch with one and other.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1534

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rural Post Office and Community Preservation Act of 2003''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) a 1993 study by the National Trust for Historic Preservation found that approximately 80 percent of people in small communities plan their trips around a visit to a post office;

(2) the Postal Service is increasingly closing small, rural post offices in the center of town and replacing such services with more distant post offices on the outskirts of such communities; and

(3) closing post offices in the centers of small, rural communities removes the hub of such communities and has a deleterious effect on the economies and quality of life in such communities.

(b) PURPOSE.—It is the purpose of this Act to limit the closure of centrally located rural post offices, and to enhance the economic health and quality of life of rural communities.

SEC. 3. MAINTAINING CENTRALLY LOCATED RURAL POST OFFICES.

Section 404(b) of title 39, United States Code, is amended by adding at the end the following:

''(3)(A) In this paragraph, the term 'rural community' means a city, town, or unincorporated area with a population of not more than 20,000 people.

''(B) The Postal Service may not make a determination to close or consolidate a post office in a rural community, unless the Postal Service makes a determination that such closing or consolidation will have a positive economic impact on that community and enhance the quality of life in that community.

''(C) In making a determination under subparagraph (B), the Postal Service shall presume that the relocation of a centrally located post office in a rural community to the boundaries of that community will have a negative economic impact on that community and will not enhance the quality of life in that community.

''(D) If the Postal Service makes a determination to close or consolidate a post office in a rural community, the Postal Service shall develop a plan, in consultation with people in the rural community, to provide for the rehabilitation and use of the post office for purposes favored by the people of that community. Such plan shall be developed before the closing or consolidation takes effect.''.

SEC. 4. GRANTS FOR REHABILITATION OF POST OFFICES IN RURAL COMMUNITIES.

(a) DEFINITION.—In this section, the term 'rural community' means a city, town, or unincorporated area with a population of not more than 20,000 people.

(b) GRANTS.—The Postal Service may award grants to State and local governments, private organizations, or individuals to provide for the rehabilitation of any closed post office in a rural community.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for each of fiscal years 2003 through 2007 to carry out this section.

SEC. 5. TRANSFER OF CLOSED POST OFFICE IN ELY, NEVADA.

The Postal Service shall transfer the real property (including all buildings and improvements) located at 415 5th Street in Ely, Nevada, and occupied by the closed post office, to the local county government of Ely County, Nevada.

By Mr. LEVIN (for himself and Ms. COLLINS):

S. 1535. A bill to amend title 23, United States Code, to establish programs to facilitate international and interstate trade; to the Committee on Environment and Public Works.

Mr. LEVIN. Mr. President, I am introducing today, with Senator COLLINS, the National Highway Borders and Trade Act. As a resident of the State of Michigan, the primary gateway for U.S.-Canadian trade, I am familiar with the pressures being placed on our Nation's highways, especially the major trade corridors. Six years ago Congress recognized the need for highway programs dedicated to interregional and international trade corridors. Since then the funds provided under the Borders and Corridors programs have helped make improvements to thousands of highway miles.

Although much progress has been made in improving transportation efficiencies, the Nation's freight infrastructure needs additional improvements. Increased international trade has put strains on the highway system that carries 70 percent of the total goods shipped in the United States and the total freight traffic is expected to more than double by the year 2020. When the Federal Highway Administration studied border crossing times for trucks in 2001 it found that some trucks experienced delays of over 83 minutes. These delays pose significant obstacles to industries dependent on just-in-time deliveries.

The National Highway Borders and Trade Act of 2003 will help reduce border crossing times and improve the highway corridors important for international and interstate commerce. Although there are only fifteen land border States, the goods that arrive via those States eventually travel to every one of the contiguous U.S. States plus Alaska. So our bill will benefit all 50 States.

The National Highway Borders and Trade Act reflects the growth in international trade and highway traffic being experienced by many States. It would increase funding for these programs and authorize $400 million a year for 6 years for the combined programs. To ensure more stability and predictability for states' border region projects, it would make the existing borders program half formula based and half discretionary.

The National Highway Borders and Trade Act also clarifies which other roads are eligible for funding to help State transportation departments plan for and manage highway commercial traffic in borders regions. Using he definition of ''borders region'' adopted by international law, roads that go through any border region would be eligible for funding.

Eligibility for funding under the Borders program will also be broadened to include certain projects in Canada or Mexico, something that many State departments of transportation have been urging for some time. By placing inspection stations and other facilities in our neighboring countries, we can more efficiently manage border traffic and check for dangerous materials before vehicles enter our country. This will also help facilitate establishing reverse customs inspection at certain border crossings.

Our bill will also help to relieve congestion and delays at the border. According to the Federal Highway Administration, congestion at border crossings can lead to long delays. The lost productivity from this congestion has a negative impact on the Nation's economy. It also causes environmental problems in the border regions. We need to get people and commerce across the borders more quickly and with greater safety.

The bill would also focus the corridors program on roads connecting to a land border and expand it to allow for funding for road connectors to water ports that accept international trade.

These changes will increase the number of eligible roads but also preserve the purpose of the program as facilitating international trade. Water ports play a very important role in international trade. For many sectors of the economy the vast majority of their supplies travels through these ports. The growth in truck traffic at the intermodal ports is taking a toll on the connecting highways. Many of these intermodal road connectors are in a state of severe deterioration.

Through TEA–21, 41 States have received funding from the corridors program. Because goods imported from Canada and Mexico end up in virtually every place in the U.S., improving the Borders and Corridors program will benefit every State and the nation's economy as a whole. Our bill will grant eligibility to roads in all 50 States.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Highway Borders and Trade Act of 2003''.

SEC. 2. COORDINATED BORDER INFRASTRUCTURE PROGRAM.

Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''§ 165. Coordinated border infrastructure program

''(a) DEFINITIONS.—In this section:

''(1) BORDER REGION.—The term 'border region' means the portion of a border State that is located within 100 kilometers of a land border crossing with Canada or Mexico.

''(2) BORDER STATE.—The term 'border State' means any State that has a boundary in common with Canada or Mexico.

''(3) COMMERCIAL VEHICLE.—The term 'commercial vehicle' means a vehicle that is used for the primary purpose of transporting cargo in international or interstate commercial trade.

''(4) PASSENGER VEHICLE.—The term 'passenger vehicle' means a vehicle that is used for the primary purpose of transporting individuals.

''(b) PROGRAM.—The Secretary shall establish and implement a coordinated border infrastructure program under which the Secretary shall make allocations to border States for projects within a border region to improve the safe movement of people and goods at or across the border between the United States and Canada and the border between the United States and Mexico.

''(c) ELIGIBLE USES.—Allocations to States under this section may only be used in a border region for—

''(1) improvements to transportation and supporting infrastructure that facilitate cross-border vehicle and cargo movements;

''(2) construction of highways and related safety and safety enforcement facilities that will facilitate vehicle and cargo movements relating to international trade;

''(3) operational improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross-border vehicle and cargo movement;

''(4) international coordination of planning, programming, and border operation with Canada and Mexico relating to expediting cross-border vehicle and cargo movements;

''(5) projects in Canada or Mexico proposed by 1 or more border States that directly and predominantly facilitate cross-border vehicle and commercial cargo movements at the international gateways or ports of entry into a border region; and

''(6) planning and environmental studies.

''(d) MANDATORY AND DISCRETIONARY PROGRAMS.—

''(1) MANDATORY PROGRAM.—

''(A) IN GENERAL.—For each fiscal year, the Secretary shall allocate among border States, in accordance with the formula described in subparagraph (B), funds to be used in accordance with subsection (c).

''(B) FORMULA.—Subject to subparagraph (C), the amount allocated to a border State under this paragraph shall be determined by the Secretary, as follows:

''(i) 25 percent in the ratio that—

''(I) the average annual weight of all cargo entering the border State by commercial vehicle across the international border with Canada or Mexico, as the case may be; bears to

''(II) the average annual weight of all cargo entering all border States by commercial vehicle across the international borders with Canada and Mexico.

''(ii) 25 percent in the ratio that—

''(I) the average trade value of all cargo imported into the border State and all cargo exported from the border State by commercial vehicle across the international border with Canada or Mexico, as the case may be; bears to

''(II) the average trade value of all cargo imported into all border States and all cargo exported from all border States by commercial vehicle across the international borders with Canada and Mexico.

''(iii) 25 percent in the ratio that—

''(I) the number of commercial vehicles annually entering the border State across the international border with Canada or Mexico, as the case may be; bears to

''(II) the number of all commercial vehicles annually entering all border States across the international borders with Canada and Mexico.

''(iv) 25 percent in the ratio that—

''(I) the number of passenger vehicles annually entering the border State across the international border with Canada or Mexico, as the case may be; bears to

''(II) the number of all commercial vehicles annually entering all border States across the international borders with Canada and Mexico.

''(C) DATA SOURCE.—

''(i) IN GENERAL.—The data used by the Secretary in making allocations under paragraph (1) shall be based on the Bureau of Transportation Statistics Transborder Surface Freight Dataset (or other similar database).

''(ii) BASIS OF CALCULATION.—All formula calculations shall be made using the average values for the most recent 5-year period for which data are available.

''(D) MINIMUM ALLOCATION.—Notwithstanding subparagraph (B), for each fiscal year, each border State shall receive at least ½ of 1 percent of the funds made available for allocation under this paragraph for the fiscal year.

''(2) OTHER FACTORS.—

''(A) IN GENERAL.—In addition to funds provided under paragraph (1), the Secretary shall select and make allocations to border States under this paragraph based on the factors described in subparagraph (B).

''(B) FACTORS.—The factors referred to in subparagraph (A) are, with respect to a project to be carried out under this section in a border State—

''(i) any expected reduction in, or improvement in the reliability of, commercial and other motor vehicle travel time through an international border crossing as a result of the project;

''(ii) strategies to increase the use of underused border crossing facilities and approaches;

''(iii) leveraging of Federal funds provided under this section, including—

''(I) the use of innovative financing;

''(II) the combination of those funds with funding provided for other provisions of this title; and

''(III) the combination of those funds with funds from other Federal, State, local, or private sources;

''(iv)(I) the degree of multinational involvement in the project; and

''(II) demonstrated coordination with other Federal agencies responsible for the inspection of vehicles, cargo, and persons crossing international borders and their counterpart agencies in Canada and Mexico;

''(v) the degree of demonstrated coordination with Federal inspection agencies;

''(vi) the extent to which the innovative and problem-solving techniques of the proposed project would be applicable to other border stations or ports of entry;

''(vii) demonstrated local commitment to implement and sustain continuing comprehensive border or affected port of entry planning processes and improvement programs; and

''(viii) such other factors as the Secretary determines to be appropriate to promote border transportation efficiency and safety.

''(e) COST SHARING.—The Federal share of the cost of a project carried out using funds allocated under this section shall not exceed 80 percent.

''(f) TRANSFER OF FUNDS TO THE ADMINISTRATOR OF GENERAL SERVICES.—

''(1) IN GENERAL.—At the request of a State, funds allocated to the State under this section shall be transferred to the Administrator of General Services for the purpose of funding a project under the administrative jurisdiction of the Administrator in a border State if the Secretary determines, after consultation with the State transportation department, as appropriate, that—

''(A) the Administrator should carry out the project; and

''(B) the Administrator agrees to use the funds to carry out the project.

''(2) NO AUGMENTATION OF APPROPRIATIONS.—Funds transferred under paragraph (1) shall not be deemed to be an augmentation of the amount of appropriations made to the General Services Administration.

''(3) ADMINISTRATION.—Funds transferred under paragraph (1) shall be administered in accordance with the procedures applicable to the General Services Administration, except that the funds shall be available for obligation in the same manner as other funds apportioned under this chapter.

''(4) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority shall be transferred to the Administrator of General Services in the same manner and amount as funds are transferred for a project under paragraph (1).

''(g) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $200,000,000 for each of fiscal years 2004 through 2009, of which—

''(A) $100,000,000 shall be used to carry out subsection (d)(1); and

''(B) $100,000,000 shall be used to carry out subsection (d)(2).

''(2) OBLIGATION AUTHORITY.—Funds made available to carry out this section shall be available for obligation as if the funds were apportioned in accordance with section 104.

''(3) EXCLUSION FROM CALCULATION OF MINIMUM GUARANTEE.—The Secretary shall calculate the amounts to be allocated among the States under section 105 without regard to amounts made available to the States under this subsection.''.

SEC. 3. NATIONAL TRADE CORRIDOR PROGRAM.

Subchapter I of chapter 1 of title 23, United States Code (as amended by section 2), is amended by adding at the end the following:

''§ 166. National trade corridor program

''(a) DEFINITION OF INTERMODAL ROAD CONNECTOR.—In this section, the term 'intermodal road connector' means a connector highway that provides motor vehicle access between a route on the National Highway System and 1 or more major intermodal water port facilities at least 1 of which accepts at least 50,000 20-foot equivalent units of container traffic (or 200,000 tons of container or noncontainer traffic) per year of international trade or trade between Alaska or Hawaii and the 48 contiguous States.

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a program to allocate funds to States to be used for coordinated planning, design, and construction of corridors of national significance.

''(2) APPLICATIONS.—A State that seeks to receive an allocation under this section shall submit to the Secretary an application in such form, and containing such information, as the Secretary may request.

''(c) ELIGIBILITY OF CORRIDORS.—The Secretary may make allocations under this section with respect to—

''(1) a high priority corridor in a State—

''(A) that is identified in section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031); and

''(B) any part of which is located in a border region (as defined in section 165(a)); and

''(2) an intermodal road connector.

''(d) ELIGIBLE USES OF FUNDS.—A State may use an allocation under this section to carry out, for an eligible corridor described in subsection (c)—

''(1) a feasibility study;

''(2) a comprehensive corridor planning and design activity;

''(3) a location and routing study;

''(4) multistate and intrastate coordination for each corridor;

''(5) environmental review; and

''(6) construction.

''(e) ALLOCATION FORMULA.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall allocate funds among States under this section in accordance with a formula determined by the Secretary after taking into consideration, with respect to the applicable corridor in the State—

''(A) the average annual weight of freight transported on the corridor;

''(B) the percentage by which freight traffic increased, during the most recent 5-year period for which data are available, on the corridor; and

''(C) the annual average number of tractor-trailer trucks that use the corridor to access other States.

''(2) MAXIMUM ALLOCATION.—Not more than 10 percent of the funds made available for a fiscal year for allocation under this section may be allocated to any State for the fiscal year.

''(f) COORDINATION OF PLANNING.—Planning with respect to a corridor for which an allocation is made under this section shall be coordinated with—

''(1) transportation planning being carried out by the States and metropolitan planning organizations along the corridor; and

''(2) to the extent appropriate, transportation planning being carried out by—

''(A) Federal land management agencies;

''(B) tribal governments; and

''(C) government agencies in Mexico or Canada.

''(g) COST SHARING.—The Federal share of the cost of a project carried out using funds allocated under this section shall not exceed 80 percent.

''(h) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $200,000,000 for each of fiscal years 2004 through 2009.

''(2) OBLIGATION AUTHORITY.—Funds made available to carry out this section shall be available for obligation as if the funds were apportioned in accordance with section 104.''.

SEC. 4. CONFORMING AMENDMENTS.

(a) Section 1101(a) of the Transportation Equity Act for the 21st Century (112 Stat. 111) is amended by striking paragraph (9) and inserting the following:

''(9) COORDINATED BORDER INFRASTRUCTURE PROGRAM AND NATIONAL TRADE CORRIDOR PROGRAM.—For the coordinated border infrastructure program and national trade corridor program under sections 165 and 166, respectively, of title 23, United States Code, $400,000,000 for each of fiscal years 2004 through 2009.''.

(b) Sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (112 Stat. 161) are repealed.

(c) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 164 the following:

''165. Coordinated border infrastructure program.

''166. National trade corridor program.''.

By Mr. EDWARDS (for himself and Mr. JEFFORDS):

S. 1536. A bill to provide for compassionate payments with regard to individuals who contracted human immunodeficiency virus due to the provision of a contaminated blood transfusion, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. I ask unanimous consent that a letter from Sandra Grissom be printed in the RECORD at the end of my bill, the Steve Grissom Relief Fund Act of 2003.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CARY, NC,
July 31, 2003.

DEAR SENATOR: The Ricky Ray Hemophilia Relief Fund Act of 1998 compensated individuals with hemophilia who had received contaminated blood products. Unfortunately, it excluded people like my husband, Steven Grissom, who received contaminated blood transfusions while undergoing treatment for leukemia (AML). He died July 31, he was 52. Steven was a veteran, an avid pilot, a loving father, a loyal and honorable husband and a proud American. This year marked our 29th year of marriage, seventeen of which my husband was ill with AIDS. Since his death, I have experienced the deepest sadness I have ever known. He represented the best of mankind. He was everything to me.

For my husband, there were too many trips to the hospital to recall, too many nights when our children and I sat by his bedside, crying, not knowing whether he would open his eyes again, too many pills at incredible cost, too many HMO battles, disabilities, wheelchairs, oxygen . . .

There are many other victims who, like Steven, became infected with HIV from contaminated blood transfusions. They are children, mothers, fathers, husbands, and wives who relied on the federal government to protect the blood supply. Yet a report issued by the Institute of Medicine found that in the 1980's the government failed to do just that. The IOM found that despite warnings from the Centers for Disease Control, the Food and Drug Administration failed to require blood banks to perform screening tests on donated blood and neglected to require proper screening of blood donors. The FDA failed to require the recall of contaminated products, nor did it require that recipients of contaminated blood products be promptly notified so they could prevent passing the virus to their loved ones.

People like us deserve the same consideration given to those in the hemophilia community who suffered the same fate. Congress passed legislation in 1998, to help patients with hemophilia who contracted HIV-tainted blood. Those like Steven who received contaminated blood through transfusions were left out.

My husband may be gone, but I hope that the Steven Grissom Relief Fund Act will be his legacy to the community of Americans with transfusion AIDS, an expression of compassion to a community nearly forgotten.

Sincerely,

SANDRA GRISSOM.

By Mrs. LINCOLN:

S. 1537. A bill to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery; to the Committee on Agriculture, Nutrition, and Forestry.

Mrs. LINCOLN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1537

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCE OF PROPERTY IN POPE COUNTY, ARKANSAS.

(a) CONVEYANCE ON CONDITION SUBSEQUENT.—Not later than 90 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c), the Secretary of Agriculture, acting through the Chief of the Forest Service (referred to in this section as the ''Secretary''), shall convey to the New Hope Cemetery Association (referred to in this section as the ''association''), for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of National Forest System land (including any improvements on the land) that—

(1) is known as ''New Hope Cemetery Tract 6686c'';

(2) consists of approximately 1.1 acres; and

(3) is more particularly described as a portion of the SE ¼ of the NW ¼ of section 30, T. 11, R. 17W, Pope County, Arkansas.

(c) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—The association shall use the parcel conveyed under subsection (a) as a cemetery.

(2) REVERSION.—If the Secretary, after notice to the association and an opportunity

for a hearing, makes a finding that the association has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1), and the association fails to discontinue that use, title to the parcel shall, at the option of the Secretary, revert to the United States, to be administered by the Secretary.

By Mr. REED (for himself, Mr. VOINOVICH, Mr. SARBANES, Ms. SNOWE, Mr. JEFFORDS, Mr. LEVIN, and Mr. HARKIN):

S. 1539. A bill to amend the Federal Water Pollution Control Act to establish a National Clean and Sage Water Fund and to authorize the Administrator of the Environmental Protection Agency to use amounts in the Fund to carry out projects to promote the recovery of waters of the United States from damage resulting from violations of that Act and the Safe Drinking Water Act, and for other purposes; to the Committee on Environment and Public Works.

Mr. REED. Mr. President, we often don't think about how important water is to our everyday lives, for our health and for our economy. As Americans, we take for granted that when we turn on the tap that clean and safe water will flow from the faucet.

Over the last three decades, the United States has made substantial progress in reducing the pollution flowing into our waters and safeguarding drinking water supplies for our communities. Despite our progress, we still face many challenges.

Population growth is increasing demand for water, and pollution from point and nonpoint sources threaten the quality and quantity of water available to us. According to EPA, the overwhelming majority of the population of the United States—218 million people—live within 10 miles of a polluted river, lake, or coastal water. Nearly 40 percent of these waters are not safe for fishing, swimming, boating, drinking water, or other needs. And while overall water pollution levels decreased dramatically over the last 30 years, recent data may be revealing a disturbing trend. Indeed, EPA's most recent National Water Quality Inventory found that the number of polluted rivers and estuaries increased between 1998 and 2000. Water pollution represents a real and daily threat to public health and to the wildlife that depend on clean water.

This year, we are celebrating the Year of Clean Water. To honor our national commitment to reduce the pollution flowing into our waters and provide safe drinking water for our communities, I am introducing the National Clean and Safe Water Fund Act of 2003. The legislation, cosponsored by Senators VOINOVICH, SARBANES, SNOWE, JEFFORDS, LEVIN and HARKIN will create a fund to carry out projects to promote water quality and protect watersheds and aquifers. It would establish a fund whose sole purpose is to advance the restoration of U.S. waters, particularly in the watersheds where these violations occurred. The bill is supported by a wide variety of organizations, including: the Narragansett Bay Commission, the Association of Metropolitan Water Agencies, American Rivers, Environmental Integrity Project, Friends of the Earth, National Audubon Society, Natural Resources Defense Council, The Ocean Conservancy and the U.S. Public Interest Research Group. I asked unanimous consent that the bill and letters of support be included in the record following my statement.

Last year, the Federal Government collected $52 million in civil and criminal penalties from violations of the Clean Water Act and Safe Drinking Water Acts. The money was deposited in the Treasury with no guarantee that the fines collected would be used to correct the water pollution for which the penalties were levied. Our legislation would make these funds available to local communities, tribes, States and non-profit organizations to protect and preserve watersheds and aquifers and to improve water quality.

This legislation would target this money to worthy projects, such as wetland protection and stream buffers to help filter out pathogens and pollutants that contaminate drinking water; land acquisition and conservation easements to protect watershed and aquifers; best management practices to prevent pollution in the first place; and, treatment works to control combined sewer or sanitary sewer overflows. Our legislation will continue progress to reduce the number of impaired waterways in our Nation, and to reduce, or better yet, prevent contamination of groundwater and drinking water sources.

It is imperative that we increase Federal investment in clean water and drinking water infrastructure and devote greater resources and attention to protecting and improving our watersheds and aquifers.

The Congressional Budget Office released a report that estimated the spending gap for clean water needs could reach as high as $388 billion and the spending gap for drinking water needs could reach $362 billion over 20 years. The CBO concluded the current funding from all levels of government and current revenue generated from ratepayers will not be sufficient to meet the Nation's future demand for water infrastructure. Yet, despite these grim statistics, the Federal Government is investing only $1.35 billion in Clean Water infrastructure each year and $850 million in Drinking Water infrastructure. And unfortunately, the President's budget proposes to cut this funding by $500 million this year.

Given the tremendous need in our communities, and the importance of water infrastructure to our economy, it is vital that the Federal Government maintain a strong partnership with States and local governments to avert this massive funding gap. We need to find new funding sources for watershed and aquifer protection. Clean, safe and abundant drinking water can no longer be taken for granted.

The costs of building new reservoirs and treatment facilities threaten to overrun our ability to pay, especially during the current fiscal crisis. Technology also has limitations in its ability to treat polluted water. Many water agencies are focusing on protecting watersheds and aquifers and conserving valuable clean water resources. In my State, the Providence Water Supply Board collects 1 cent per 100 gallons in a water usage tax to fund watershed acquisition. This may be our best and cheapest way to guarantee water quality and quantity.

Congress needs to increase support for efforts to protect our water resources. Polluted runoff from urban and agricultural land is now the most significant source of water pollution in the nation and the greatest threat to our drinking water. Our greatest future gains in pollution control will, therefore, come from reducing non-point source pollution.

There are cost-effective and environmentally sound projects that could help reduce this pollution, but currently, many non-point source projects cannot participate in the State revolving loan programs since they often do not have a guaranteed source of revenue. Also, without making new Federal resources available it is unlikely we will be able support increased investment in green infrastructure projects such as wetland conservation and stream buffers. The legislation that we are introducing today will make greater funding available for water quality projects.

I hope that my colleagues will join Senators VOINOVICH, SARBANES, SNOWE, JEFFORDS, LEVIN, HARKIN and me in supporting this legislation. Creating this fund will help further the Nation's goals of providing safe and clean water for our communities and restoring water quality for wildlife.

Mr. President, I ask unanimous consent that the text of bill and letters of support be printed in the RECORD.

There being no objection, the material ordered to be printed in the RECORD, as follows:

S. 1539

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Clean and Safe Water Fund Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Administrator of the Environmental Protection Agency has determined that more than 40 percent of the assessed water of the United States does not meet applicable water quality standards established by States, territories, and Indian tribes;

(2) the water described in paragraph (1) includes approximately 300,000 miles of rivers and shorelines, and approximately 5,000,000 acres of lakes, that are polluted by sediments, excess nutrients, and harmful microorganisms;

(3) Congress enacted—

(A) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) to maintain the chemical, physical, and biological integrity of water of the United States; and

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.) to protect public health by regulating the public drinking water supply of the United States;

(4) because criminal, civil, and administrative penalties assessed under the Acts referred to in paragraph (3) are returned to the Treasury, those amounts are not available to protect, preserve, or enhance the quality of water in watersheds in which violations of those Acts occur; and

(5) the establishment of a national clean and safe water fund would help States in achieving the goals described in paragraph (1) by providing funding to protect and improve watersheds and aquifers.

SEC. 3. NATIONAL CLEAN AND SAFE WATER FUND.

Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319) is amended by adding at the end the following:

''(h) NATIONAL CLEAN AND SAFE WATER FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a fund to be known as the 'National Clean and Safe Water Fund' (referred to in this subsection as the 'Fund') consisting of amounts transferred to the Fund under paragraph (2) and amounts credited to the Fund under paragraph (3).

''(2) TRANSFER OF AMOUNTS.—Notwithstanding any other provision of law, for fiscal year 2003 and each fiscal year thereafter, the Secretary of the Treasury shall transfer to the Fund an amount determined by the Secretary to be equal to the total amount deposited in the general fund of the Treasury in the preceding fiscal year from fines, penalties, and other funds collected as a result of enforcement actions brought under this section, section 505(a)(1), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.), excluding any amounts ordered to be used to carry out projects in accordance with subsection (d).

''(3) INVESTMENT OF AMOUNTS.—

''(A) IN GENERAL.—The Secretary of the Treasury shall invest in interest-bearing obligations of the United States such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

''(B) ADMINISTRATION.—The obligations shall be acquired and sold and interest on, and the proceeds from the sale or redemption of, the obligations shall be credited to the Fund in accordance with section 9602 of the Internal Revenue Code of 1986.

''(4) USE OF AMOUNTS FOR WATER QUALITY PROJECTS.—

''(A) IN GENERAL.—Amounts in the Fund shall be available to the Administrator, subject to appropriation, to carry out projects the primary purpose of which is water quality maintenance or improvement, including—

''(i) water conservation projects;

''(ii) wetland protection and restoration projects;

''(iii) contaminated sediment projects;

''(iv) drinking water source protection projects;

''(v) projects consisting of best management practices that reduce pollutant loads in an impaired or threatened body of water;

''(vi) decentralized stormwater or wastewater treatment projects, including low-impact development practices;

''(vii) projects consisting of conservation easements or land acquisition for water quality protection;

''(viii) projects consisting of construction or maintenance of stream buffers;

''(ix) projects for planning, design, and construction of treatment works to remediate or control combined or sanitary sewer overflows; and

''(x) such other similar projects as the Administrator determines to be appropriate.

''(B) LIMITATIONS ON USE OF FUNDS.—Amounts in the Fund—

''(i)(I) shall be used only to carry out projects described in subparagraph (A); and

''(II) shall not be used by the Administrator to pay the cost of any legal or administrative expense incurred by the Administrator (except a legal or administrative expense relating to administration of the Fund); and

''(ii) shall be in addition to any amount made available to carry out projects described in subparagraph (A) under any other provision of law.

''(5) SELECTION OF PROJECTS.—

''(A) PRIORITY.—In selecting among projects eligible for assistance under this subsection, the Administrator shall give priority to a project described in paragraph (4) that is located in a watershed in a State in which there has occurred a violation under this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) for which an enforcement action was brought that resulted in the payment of an amount into the general fund of the Treasury.

''(B) SELECTION CRITERIA.—The Administrator, in consultation with the United States Geological Survey and other appropriate agencies, shall establish criteria that maximize water quality improvement in watersheds and aquifers for use in selecting projects to carry out under this subsection.

''(C) COORDINATION WITH STATES.—In selecting a project to carry out under this subsection, the Administrator shall coordinate with the State in which the Administrator is considering carrying out the project.

''(6) IMPLEMENTATION.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Administrator may carry out a project under this subsection making grants to—

''(i) another Federal agency;

''(ii) a State agency;

''(iii) a political subdivision of a State;

''(iv) a publicly-owned treatment works;

''(v) a nonprofit entity;

''(vi) a public water system (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f));

''(vii) a Federal interstate water compact commission;

''(viii) an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); or

''(ix) a Native Hawaiian (as defined in section 12 of the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11710)).

''(B) EXCLUSION.—Under subparagraph (A), the Administrator may not make any grant to or enter into any contract with any private entity that is subject to regulation under—

''(i) this Act; or

''(ii) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

''(7) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this subsection and biennially thereafter, the Administrator shall submit to Congress a report that—

''(A) identifies the projects selected for funding under this subsection during the period covered by the report;

''(B) details the selection criteria established under paragraph (5)(B) that were used to select those projects;

''(C) describes the ways in which the Administrator coordinated with States under paragraph (5)(C) in selecting those projects; and

''(D) describes the priorities for use of funds from the Fund in future years in order to achieve water quality goals in bodies of impaired or threatened water.

''(8) NO EFFECT ON OBLIGATION TO COMPLY.—Nothing in this subsection affects the obligation of any person subject to this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) to comply with either of those Acts.''.

SEC. 4. USE OF CIVIL PENALTIES FOR REMEDIAL PROJECTS.

(a) IN GENERAL.—Section 309(d) of the Federal Water Pollution Control Act (33 U.S.C. 1319(d)) is amended by inserting after the second sentence the following: ''The court may order that a civil penalty assessed under this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) (other than a civil penalty that would otherwise be deposited in the Oil Spill Liability Trust Fund under section 9509 of the Internal Revenue Code of 1986) be used to carry out 1 or more projects in accordance with clauses (i) through (iv) of subsection (h)(4)(A).''.

(b) CONFORMING AMENDMENT.—Section 505(a) of the Federal Water Pollution Control Act (33 U.S.C. 1365(a)) is amended in the last sentence by inserting before the period at the end the following: '', including ordering the use of a civil penalty for carrying out projects in accordance with section 309(d)''.

ASSOCIATION OF METROPOLITAN WATER AGENCIES,
Washington, DC, July 31, 2003.

Hon. JACK REED,
U.S. Senate,
Washington, DC.

DEAR SENATOR REED: I write today to express the support of the Association of Metropolitan Water Agencies (AMWA) for your National Clean and Safe Water Fund Act of 2003.

AMWA is an association of the nation's largest publicly owned drinking water systems. AMWA members serve safe drinking water to more than 110 million Americans.

Funded with fines collected due to violations of the Clean Water Act and the Safe Drinking Water Act, the National Clean and Safe Water Fund could provide much-needed resources to improve the rivers and lakes that serve as sources of drinking water for millions of Americans.

Agricultural run-off remains the largest contributor of nonpoint source pollution in our nation's waters. According to the Environmental Protection Agency and the U.S. Geological Survey, agricultural pollution—such as siltation, animal waste, pesticides and fertilizers—contributes to 59 percent of reported water quality problems in impaired rivers and streams.

These and other water quality problems in our nation's sources of drinking water could be reduced with the assistance of land acquisition, reduced pollutant loading, wetlands restoration, wastewater treatment works and other projects eligible for funding in the National Clean and Safe Water Fund Act of 2003.

Sincerely,

DIANE VANDE HEI,
Executive Director.

THE NARRAGANSETT BAY COMMISSION,
Providence, RI, July 29, 2003.

Hon. JACK REED,
U.S. Senator, Senate Hart Office Building, Washington, DC.

DEAR SENATOR REED: On behalf of the Narragansett Bay Commission, I am writing to express support for the Clean and Safe Water Fund Legislation, as proposed by you and Senators Voinovich and Sarbanes.

According to the EPA, the Congressional Budget Office, and the Water Infrastructure Network, the nation faces a funding gap as

high as $46 billion per year for necessary and mandated water and wastewater infrastructure projects. The burden of paying for these mandated projects currently falls almost exclusively on municipalities. This legislation will be an important first step in moving toward a national trust fund for water and wastewater infrastructure.

We applaud you and your fellow Senator for your recognition of the importance of a dedicated funding source for water and wastewater infrastructure and we are pleased to support this bill.

Sincerely,

PAUL PINAULT, P.E.,
Executive Director.

AMERICAN RIVERS ENVIRONMENTAL INTEGRITY PROJECT, FRIENDS OF THE EARTH, NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, THE OCEAN CONSERVANCY, U.S. PUBLIC INTEREST RESEARCH GROUP,

July 2003.

DEAR SENATOR REED: On behalf of our organizations and the millions of members we represent, we are writing to express our support for your new legislation, the National Clean and Safe Water Fund Act of 2003. Currently, funds from violators of the Clean Water Act and Safe Drinking Water Act go into the general Treasury, and are not specifically earmarked for the protection and enhancement of water quality. This legislation would establish a fund whose sole purpose is to advance the restoration of U.S. waters, particularly in the areas in which violations of those acts occur.

This year marks the 30th anniversary of the Clean Water Act, but unfortunately we remain far behind the goals of the authors of the Act. The Environmental Protection Agency acknowledges that over 40 percent of our nation's waters remain unfit for fishing and swimming. We need to do a better job of enforcing the laws that are already on the books, as well as adopting new strategies to ensure that penalties from violations of clean water laws are used to restore the impacted watersheds. The National Clean and Safe Water Fund Act of 2003 outlines many projects for which penalties collected from violators of the Clean Water Act and Safe Drinking Water Act would go towards, including drinking water source protection, wetland protection and restoration, and stormwater and wastewater treatment projects.

We appreciate your leadership in introducing this legislation, and look forward to working with you to see it passed into law.

ELLEN ATHAS,
Director, Clean Oceans Programs, The Ocean Conservancy.
RICHARD CAPLAN,
Environmental Advocate, U.S. Public Interest Research Group.
MICHELE M. MERKEL,
Senior Counsel, Environmental Integrity Project.
BETSY OTTO,
Senior Director, Watersheds Program, American Rivers.
PERRY PLUMART,
Director of Government Relations, National Audubon Society.
NANCY STONER,
Director, Clean Water Project, Natural Resources Defense Council.
SARA ZDEB,
Legislative Director, Friends of the Earth.

By Mr. DASCHLE:

S. 1540. A bill to provide for the payment of amounts owed to Indian Tribes and individual Indian money account holders; to the Committee on Indian Affairs.

Mr. DASCHLE. Mr. President, the legislation I am introducing today should be important to all Americans—Indians and non-Indians alike. The primary goal of the ''Indian Trust Payment Equity Act of 2003'' is to start a process for repaying the debt owed by the United States of America to Indian tribes and individual American Indians.

For over one hundred years, the Department of Interior has managed a trust fund containing the proceeds of leasing of oil, gas, land and mineral rights on Indian land for the benefit of Indian people. Today, far from enjoying a sense of security about the investment of these assets, tribal and individual Indian account holders cannot even be assured of the accuracy of the balances that the Department of Interior claims are in their accounts. It is estimated that the trust fund may owe anywhere from $10 billion to over $100 billion to Indian tribes and Indian people. This is money that everyone agrees is rightfully theirs and desperately needed to address a host of human needs.

There is little disagreement that the Interior Department's stewardship of the trust fund, through administrations of both political parties, has been a colossal failure. Rather than just continue the debate over how best to reorganize the Department of Interior, this legislation is intended to jumpstart the process of repayment by establishing an Equity Payment Trust Fund.

The Indian Trust Payment Equity Act calls for appropriating $10 billion to the Trust Fund over five years, as $10 billion is an undeniably low estimate of what is owed by the United States. If an account holder accepts the results of a certified audit of their account, then the Equity Payment Trust Fund would provide for a partial payment until a full accounting is satisfied. Indian tribes would be able to voluntarily contract with the Secretary to assist in the audit process.

This bill provides a means for tribes to assist individual allottees to obtain an accounting and a more prompt settlement than any proposal put forward to date.

Treaties entered into by the United States constitute a significant element of the law of the land. Unfortunately, the Untied States has abridged its treaty obligations by grossly mismanaging the trust fund it holds as trustee for Indian tribes and people. It is a particularly sad story given the high level of human need that exists on Indian reservations throughout South Dakota and across the country.

Last Friday, Senators MCCAIN, JOHNSON and I introduced S. 1459, ''the American Indian Trust Fund Management Reform Act Amendments Act of 2003.'' We were joined in this effort by Representatives MARK UDALL and NICK RAHALL who introduced the House companion measure, H.R. 2981, that same day. The Indian Trust Payment Equity Act of 2003 is intended to complement S. 1459 and create a multifaceted solution to the underlying problem of trust fund mismanagement.

Restoring accountability and efficiency to trust management, and paying account holders what they are owed, is a matter of fundamental justice. And nowhere do the principles of self-determination and tribal sovereignty come more into play than in the management and distribution of trust funds and assets clearly owed to Indian tribes and Indian people.

It is time to expedite the historical accounting of what is owed and deal with the trust management issue once and for all. This legislation makes a strong statement about the importance of completing the historical accounting and making payments to the tribes and individual Indian allottees who are waiting for what is rightfully theirs. They have waited long enough.

I look forward to comments, suggestions and feedback from those interested in this issue and hope this bill can serve as a basis for serious discussion. I do believe this issue should be of interest and of importance to all Americans and, therefore, all members of Congress, as it addresses a debt and responsibility of the United States. I hope I can count on the support of my Senate colleagues for this effort to address the challenging and complex Indian trust reform issue.

By Mrs. CLINTON (for herself, Mr. ENSIGN, and Mr. BINGAMAN):

S. 1543. A bill to amend and improve provisions relating to the workforce investment and adult education systems of the Nation; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise to announce that today I am introducing The Access to Employment and English Acquisition Act with Senator ENSIGN and Senator BINGAMAN. I am grateful to both Senators for working with me to develop this legislation. I consider them partners in the important effort to expand opportunities for job training for Limited English Proficient individuals. I also want to thank the dedicated individuals at the New York Immigration Coalition, the National Immigration Law Center, the National Council at La Raza and the Immigration Forum for their significant contributions to this proposal.

It is vitally important that our workforce investment system be responsive to the needs of those who do not speak English. Immigrants and Limited English Proficient individuals play a crucial role in the New York State and

U.S. economy. Immigrants account for nearly half of the growth in the civilian labor force between 1990 and 2000 and immigrants are projected to account for all of the growth in the prime-age labor force between 2000 and 2020.

Immigrants fill critical jobs, are the backbone of many industries, and are net contributors to the Nation's tax base. Without current and future immigrants in the workforce, our aging society will be short of workers; short of savings and investment to support national economic growth; and short of tax revenues to finance government services and Social Security outlays.

The Health, Education, Labor and Pensions Committee on which I serve, is in the process of reauthorizing the Workforce Investment (WIA). WIA reauthorization provides a valuable opportunity for Congress to improve our Nation's workforce development system to effectively serve immigrants and persons who are Limited English proficient. And I look forward to working with my colleagues on the HELP Committee to incorporate this legislation into the reauthorization bill.

The Access to Employment and English Acquisition Act will reduce barriers to job training for English language learners by creating incentives for training providers to serve these individuals. It will also make programs that integrate job training and language acquisition more accessible. Employees have found that integrated programs offer a significant return on their investment because they improve productivity, reduce attendance problems, increase job retention rates, and promote overall quality control. Limited English Proficient persons also benefit from integrated training through improved job security, increased job advancement, and a greater ability to participate in society.

There is no question that English proficiency is critical to economic advancement and improved quality of life for LEP workers and their families. Workers who are fluent in oral and written English earn about 24 percent more than those who lack fluency, regardless of their qualifications. These individuals are better able to participate in the civic life of their community, which so many LEP individuals in New York tell me they want to do.

I look forward to continuing the work with Senator ENSIGN and Senator BINGAMAN to improve job training services for immigrants and LEP individuals.

By Mr. FEINGOLD:

S. 1544. A bill to provide for data-mining reports to Congress; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased today to offer the Data-Mining Reporting Act of 2003. The untested and controversial intelligence procedure known as data-mining is capable of maintaining extensive files containing both public and private records on each and every American. Almost weekly, we learn about a new data-mining program under development like the newly named Terrorism Information Awareness program. Congress should not be learning the details about these programs after millions of dollars are spent testing and using data-mining against unsuspecting Americans.

Coupled with the expanded domestic surveillance already undertaken by this Administration, the unchecked development of data-mining is a dangerous step that threatens one of the most important values that we are fighting for in the war against terrorism—freedom. My bill would require all Federal agencies to report to Congress within 90 days and every year thereafter on data-mining programs used to find a pattern indicating terrorist or other criminal activity and how these programs implicate the civil liberties and privacy of all Americans. If it was necessary, information in the various reports would even be classified.

The bill does not end funding for any program, determine the rules for use of the technology or threaten any ongoing investigation that uses data-mining technology. But, with complete information about the current data-mining plans and practices of the Federal Government, Congress will be able to conduct a thorough review of the costs and benefits of the practice of data-mining on a program by program basis and make considered judgments about which programs should go forward and which should not.

My bill would provide Congress with information about the nature of the technology and the data that will be used. The Data-Mining Reporting Act would require all government agencies to assess the efficacy of the data-mining technology and whether the technology can deliver on the promises of each program. In addition, my bill would make sure that the federal agencies using data-mining technology have considered and developed policies to protect the privacy and due process rights of individuals and ensure that only accurate information is collected and used.

Without Congressional review and oversight, government agencies like the Department of Homeland Security, the Department of Justice and the Department of Defense will be able to collect and analyze a combination of intelligence data and personal information like individuals' traffic violations, credit card purchases, travel records, medical records, communications records, and virtually any information contained in commercial or public databases. Through comprehensive data-mining, everything from people's video rentals or drugstore purchases made with a credit card to their most private health records could be fed into a computer and monitored and reviewed by the Federal Government.

Using massive data mining, the government hopes to be able to detect potential terrorists. There is no evidence, however, that data-mining will, in fact, prevent terrorism. Data-mining programs under development are being used to look into the future before being tested to determine if they would have even been able to anticipate past events, like September 11 or the Oklahoma City bombing. Before we develop the ability to feed personal information about every man, woman and child into a giant computer, we should learn what data-mining can and can't do and what limits and protections are needed.

One must also consider the potential for errors in data-mining for example, credit agencies that have data about John R. Smith on John D. Smith's credit report make the prospect of ensnaring many innocents is real.

Most Americans believe that their private lives should remain private. Data-mining programs run the risk of intruding into the lives of individuals who have nothing to do with terrorism but who trust that their credit reports, shopping habits and doctor visits would not become a part of a gigantic computerized search engine, operating without any controls or oversight.

The Administration should be required to report to Congress about the impact of the various data-mining programs now underway or being studied, and the impact those programs may have on our privacy and civil liberties so that Congress can determine whether the proposed benefits of this practice come at too high a price to our privacy and personal liberties.

I urge my colleagues to support this bill. All it asks for is information to which Congress and the American people are entitled.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1544

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Data-Mining Reporting Act of 2003''.

SEC. 2. DEFINITIONS.

In this Act:

(1) DATA-MINING.—The term ''data-mining'' means a query or search or other analysis of 1 or more electronic databases, where—

(A) at least 1 of the databases was obtained from or remains under the control of a non-Federal entity, or the information was acquired initially by another department or agency of the Federal Government for purposes other than intelligence or law enforcement;

(B) the search does not use a specific individual's personal identifiers to acquire information concerning that individual; and

(C) a department or agency of the Federal Government is conducting the query or search or other analysis to find a pattern indicating terrorist or other criminal activity.

(2) DATABASE.—The term ''database'' does not include telephone directories, information publicly available via the Internet or available by any other means to any member

of the public without payment of a fee, or databases of judicial and administrative opinions.

SEC. 3. REPORTS ON DATA-MINING ACTIVITIES.

(a) REQUIREMENT FOR REPORT.—The head of each department or agency of the Federal Government that is engaged in any activity to use or develop data-mining technology shall each submit a public report to Congress on all such activities of the department or agency under the jurisdiction of that official.

(b) CONTENT OF REPORT.—A report submitted under subsection (a) shall include, for each activity to use or develop data-mining technology that is required to be covered by the report, the following information:

(1) A thorough description of the data-mining technology and the data that will be used.

(2) A thorough discussion of the plans for the use of such technology and the target dates for the deployment of the data-mining technology.

(3) An assessment of the likely efficacy of the data-mining technology in providing accurate and valuable information consistent with the stated plans for the use of the technology.

(4) An assessment of the likely impact of the implementation of the data-mining technology on privacy and civil liberties.

(5) A list and analysis of the laws and regulations that govern the information to be collected, reviewed, gathered, and analyzed with the data-mining technology and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program.

(6) A thorough discussion of the policies, procedures, and guidelines that are to be developed and applied in the use of such technology for data-mining in order to—

(A) protect the privacy and due process rights of individuals; and

(B) ensure that only accurate information is collected and used.

(7) A thorough discussion of the procedures allowing individuals whose personal information will be used in the data-mining technology to be informed of the use of their personal information and what procedures are in place to allow for individuals to opt out of the technology. If no such procedures are in place, a thorough explanation as to why not.

(8) Any necessary classified information in an annex that shall be available to the Committee on Governmental Affairs, the Committee on the Judiciary, and the Committee on Appropriations of the Senate and the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives.

(c) TIME FOR REPORT.—Each report required under subsection (a) shall be—

(1) submitted not later than 90 days after the date of the enactment of this Act; and

(2) updated once a year and include any new data-mining technologies.

By Mr. HATCH (for himself, Mr. DURBIN, Mr. LUGAR, Mr. LEAHY, Mr. CRAIG, Mr. FEINGOLD, Mr. CRAPO, and Mr. GRASSLEY):

S. 1545. A bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce legislation that will help make the American dream a reality for many young people. ''The Development, Relief and Education for Alien Minors Act,'' or ''The DREAM Act,'' resolves immigration status problems that plague undocumented immigrants who came to our country as youths. It also removes barriers to education so that they are better equipped to succeed in our society.

Each year, about fifty thousand young undocumented immigrants graduate from high school in the United States. Most of them came to this country with their parents as small children and have been raised here just like their U.S. citizen classmates. They view themselves as Americans, and are loyal to our country. Some may not even realize that they are here in violation of our immigration laws. They grow up to become honest and hard-working adolescents and young adults, and strive for academic as well as professional excellence.

Many of these youngsters find themselves caught in a catch-22 situation. As illegal immigrants, they cannot work legally. Moreover, they are effectively barred from developing academically beyond high school because of the high cost of pursuing higher education. Private colleges and universities are very expensive, and under current federal law, state institutions cannot grant in-state tuition to illegal immigrants, regardless of how long they have resided in that state. To make matters worse, as illegal immigrants, these young people are ineligible for federal tuition assistance. Moreover, these young people have no independent way of becoming legal residents of the United States.

In short, though these children have built their lives here, they have no possibility of achieving and living the American dream. What a tremendous loss to our society.

One young man who is in this predicament lives in my home State of Utah. His name is Danny Cairo. Danny came to the United States at the age of six with his mother who abandoned him eights years later. Danny had to drop out of school in order to support himself. Fortunately, he met Kevin King, who adopted Danny in 2001. With the help of Mr. King, Danny is presently attending the University of Utah.

This story, however, does not necessarily have a happy ending. Because of the date of the adoption, Danny is unable to derive immigration status from Mr. King. He, therefore, lives in legal limbo and faces the threat of deportation daily. In addition, he may never be able to legally work in the United States.

As Mr. King wrote to me, ''Danny is exactly what our country needs more of. He is a natural born leader with charisma and intelligence and a drive that will take him wherever he wants to go. But this will not be possible if Danny is unable to obtain permanent residency.''

Our laws should not discourage those with bright young minds from seeking higher education. We should instead assist and encourage the many ''Dannys'' who are in the United States and who have the dedication and drive to achieve their worthy goals. I am proud that the DREAM Act provides illegal alien children with options for higher education, as well as the opportunity to earn legal residence in the United States.

First, the DREAM Act repeals the provision of Federal law that prevents States from granting in-State tuition to undocumented aliens, leaving this issue at the discretion of the States. My own State of Utah passed a law that will allow in-State tuition for aliens who have been residents in Utah for at least three years. My States have either passed or are considering the passage of similar legislation.

But the fact of the matter is that cheaper tuition at State schools, no matter how beneficial for these young people, will not solve the larger problem: their illegal immigration status. While I do not advocate granting unchecked amnesty to illegal immigrants, I am, however, in favor of providing children—children who did not make the decision to enter the United States illegally—the opportunity to earn the privilege of remaining here legally. The DREAM Act will do just that. It provides young men and women who immigrated to the United States prior to the age of sixteen, who have lived in this country at least five years, and who are of good moral character a chance to earn their conditional resident status upon acceptance by an institution of higher learning or upon graduation from high school. The DREAM Act allows these special young people to pursue their worthy goals and aspirations.

The bill I am introducing today will extend DREAM Act benefits to a group of people who were excluded from a similar bill negotiated during the 107th Congress. Today's bill removes the age ceiling so that no one will be arbitrarily cut-off from benefits. Moreover, while the version from the last Congress requires high school graduation as a provision for obtaining legal status, the bill I am introducing today contains a provision that allows high school students who have been accepted into an institution of higher learning, but who have not yet graduated from high school, to obtain conditional resident status. This provision enables these high school students to get an earlier start on procuring the necessary funds for financing their education.

Of course, we have to be mindful that the opportunity provided by the DREAM Act is a privilege and not an entitlement. We must make sure that those who reap the benefits of the Act are, in fact, worthy of such benefits. For this reason, the bill I am introducing today tightens certain requirements and eliminates waivers for those

who have serious criminal records that would qualify them for deportation.

In addition, while I always want to encourage educational advancement, I recognize that not everyone's circumstances allow for full-time attendance at a four-year college. For this reason, the DREAM Act provides for certain alternatives like attending community college, trade school, serving in our armed forces, or performing community service.

The purpose of the DREAM Act is to create incentives for out-of-status youngsters to achieve as much as they can in life and to contribute to the greatness of the United States. I recognize that if the bill's requirements are so high that they simply operate as barriers to legalizing status, the bill defeats its own stated purpose. That is why I am committed to ensuring that the requirements imposed by this bill are reasonable and can be met by youngsters who are willing to work hard. The DREAM Act will enable youngsters who have ambition and motivation to obtain permanent legal status.

During the 107th Congress, I introduced a version of the DREAM Act, S. 1291. Since then, it has been replaced in favor of the Durbin/Hatch/Kennedy/Brownback substitute. The substitute was put on the Senate calendar but did not receive a vote. The House Judiciary Committee debated identical legislation during the last Congress but it was defeated. The House Judiciary Committee has not yet moved similar legislation this Congress. I want to make sure that the DREAM Act we introduce in the 108th Congress will not die in the hopper as it did in the House last year.

By introducing this bill, I know I am subjecting myself to criticism from both sides of the aisle on my immigration policy. Some proponents of strict immigration enforcement argue that the DREAM Act will encourage illegal entry into the United States. However, the DREAM Act was carefully drafted to avoid this precise problem. The Act specifically limits eligibility to those who entered the United States five years or more prior to the bill's enactment. It applies to a limited number of people who already reside in the United States and who have demonstrated favorable equities in and significant ties to the United States. Anyone who entered the United States less than five years prior to the enactment of this bill or who plans to illegally enter the United States in the future will not be covered by the DREAM Act.

On the other hand, proponents for providing general amnesty contend that there shouldn't be any requirements after high school graduation. I agree that for some of these children, graduation from high school is a grand enough accomplishment in itself. My bill recognizes this achievement by providing these graduates with the reward of conditional resident status so that they may work toward permanent status without fear of deportation.

Nonetheless, some critics argue that most immigrant children cannot go to college, nor can they meet the standards set by the current version of the DREAM Act. They cite statistics showing that only a small percentage of illegal immigrant children ever attend college and they argue that this DREAM bill will benefit very few. What these critics overlook, however, is that without the DREAM Act, illegal immigrant children simply do not have the means nor the incentive to obtain a higher education. Since the DREAM Act will remove substantial obstacles to higher education, I am confident that many of the children who are currently illegal U.S. residents will seek higher education.

Some critics also contained that these immigrant children do not have the aptitude to attend community college or trade school and that even joining the military or performing a few hours a week of community service is out of reach for them. To this criticism I stress that this is not only wholly inaccurate, but it is also an elitist attitude to which I cannot subscribe. Immigrant children, whether legal or otherwise, are no less capable than other children. They just need the opportunity to reach their potential.

I also want to point out that everyone who was eligible for benefits under last year's bill will be eligible again this year. In fact, as I explained earlier, those who were left out of last year's bill are included in this year's bill. The only difference is that now, the applicant has to contribute more to American society before transitioning from conditional resident status to permanent resident status.

I believe the DREAM Act will live up to its name. It will allow these illegal immigrant children the opportunity to not only dream of the infinite possibilities that their futures may hold in the United States, but it will also afford them the opportunity to realize their dreams. With the passage of the DREAM Act, the United States stands to benefit enormously. Once these children become legal residents of this Nation, they will prove to be motivated, hard-working, and educated contributors to our society. I am pleased and proud once again to work with Senator DURBIN on this important legislation.

Mr. DURBIN. Mr. President, today, my colleague Senator HATCH and I are again introducing legislation that would provide immigration relief to undocumented students of good moral character who want to pursue a better life for themselves and their families. It would benefit the American economy by unleashing the potential of these students, who have grown up in the U.S. and graduated from high school or obtained an equivalent degree. The DREAM Act is a bipartisan bill which has broad support in the Hispanic, religious and immigrant communities.

Each year, approximately 50–60,000 undocumented children, including honors students and valedictorians, graduate from our nation's high schools or receive an equivalent degree. Many of these students were brought to the U.S. by their parents at an age when they were too young to appreciate the legal consequences of their actions. Despite long-term residency in the U.S. and a demonstrated commitment to obtaining an education, these students have no avenue for adjusting their immigration status and it is very difficult for them to attend college or work. Instead, they face possible deportation.

Although these young people are entitled to a free public education at the primary and secondary level, Federal law strongly discourages states from extending in-state college tuition rates to them. Additionally, they cannot legally work, are ineligible for federal tuition assistance, and have great difficulty obtaining private loans.

These roadblocks to higher education hurt our society because we are deprived of future leaders, and the increased tax revenues and economic growth they would produce. Young people with great potential and ambitions are limited to the employment options available to those without a college degree. In fact, many of these students do not even finish high school, further limiting their options and ability to contribute to our economy, because they drop out of school once they realize that they will be unable to attend college.

The DREAM Act would provide meaningful relief to many of these students. It would repeal a provision of federal law that makes it prohibitively expensive for states to grant post-secondary benefits, such as in-state tuition rates, to undocumented children. The bill would also provide an earned adjustment mechanism by which young people who are long-term U.S. residents may become lawful permanent residents.

Approving this bill would give accomplished young people the opportunity to pursue the American dream. I urge my colleagues to support it.

By Mr. MCCONNELL (for himself and Mr. LIEBERMAN):

S. 1546. A bill to provide small businesses certain protection from litigation excesses and to limit the product liability of non-manufacturer product sellers; to the Committee on the Judiciary.

Mr. MCCONNELL. Mr. President, today Senator LIEBERMAN and I introduced the ''Small Business Liability Reform Act of 2003,'' which aims to restore common sense to the way our civil litigation system treats small businesses. Small businesses form the backbone of America's economy. But in our legal system, small businesses are often forced to defend themselves in court for actions they did not commit and pay damages for harms they did not cause. These businesses also frequently find themselves faced with extraordinarily high punitive damages awards. These unfortunate realities

threaten the very existence of many small businesses, and when American small businesses go under, our economy is harmed as new products are not developed, produced, or sold, and employers cannot retain employees or hire new ones.

Small businesses—those with 25 or fewer full-time employees—employ almost 60 percent of the American workforce. Because the majority of small business owners earn less than $50,000 a year, they often lack the resources to fight unfair lawsuits which could put them out of business. When faced with such a lawsuit, many of these entrepreneurs must either risk a lengthy battle in court, in which they may be subjected to large damage awards, or settle the dispute out of court for a significant amount. Either way, our current system jeopardizes the livelihood and futures of small business owners and their employees.

The Small Business Liability Reform Act of 2003 would remedy these ills with three common-sense solutions, all of which protect our nation's entrepreneurs from unfair lawsuits and excessive damage awards. First, it would allow a punitive damages award against a small business only upon clear and convincing evidence, rather than upon a simple preponderance of the evidence, and it would set reasonable limits on the size of punitive damages awards—the lesser of $250,000 or three times compensatory damages.

Second, our bill would restore basic fairness to the law by eliminating joint and several liability for small businesses for non-economic damages, such as pain and suffering, so a small defendant is not forced to pay for harms it did not cause. Under the current joint and several liability rules, if a small business is found liable with other defendants, the small business may be forced to pay a disproportionate amount of the damages if it has ''deep pockets'' relative to the other responsible parties. For example, a small business that was found responsible for only 10 percent of the harm in a case may have to pay half, two-thirds or even all of the damages. This legislation would prevent this unfair situation, but it would not change a small business's joint and several liability for economic damages, such as medical expenses and lost wages; because a small business could still be responsible for all economic damages, regardless of its degree of fault, plaintiffs will still be able to recover all of their out of pocket costs. By protecting small businesses from having to pay non-economic damages for which they are not responsible, though, the Small Business Liability Reform Act of 2003 partially relieves a potentially unfair situation.

Third, our bill addresses some of the iniquities facing non-manufacturing product sellers. Currently, a person who has nothing to do with a defective and harmful product other than simply selling it can be sued with the manufacturer. Under the reforms in the Small Business Liability Reform Act of 2003, however, a product seller can only be held liable for harms caused by his own negligence, intentional wrongdoing, or breach of his own warranty.

This bill would provide much needed protection and relief to small business owners, workers, and consumers. By making our legal system reasonable and fair to small businesses, we will remove one of the greatest barriers to starting and maintaining a small business: the threat of crippling, excessive, and unfair lawsuits. That means increased competition, better and more affordable goods, and more jobs at a time when America could use them all. The Small Business Liability Reform Act of 2003 is a win for all Americans, and it is my hope that the Senate will pass this bipartisan bill. Finally, I would ask unanimous consent that letters in support of this legislation from the National Federation of Independent Business, the National Association of Wholesale-Distributors, the Motorcycle Industry Council, and the Small Business Legal Reform Coalition be printed in the RECORD.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JULY 31, 2003.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the Small Business Legal Reform Coalition, we are writing to thank you for sponsoring the Small Business Liability Reform Act of 2003, and to express our strong support for its passage. We commend you for your efforts to restore common sense to our civil justice system—one that takes a particularly heavy toll on the smallest of America's businesses.

The frequency and high cost of litigation is a matter of growing concern to small businesses across the country. Today's civil justice system presents a significant disincentive to business start-ups and continued operations. If sued, business owners know they have to choose between a long and costly trial or an expensive settlement. Business owners across the nation risk losing their livelihood, their employees and their future every time they are confronted with an unnecessary lawsuit.

The Small Business Liability Reform Act of 2003 would make two reforms that have topped the small business community's agenda for years: cap punitive damages and abolish joint liability for non-economic damages for those with fewer than 25 employees. These reforms have been among the recommendations of the White House Conference on Small Business since the early 1980s—and the time has come to protect the smallest of small businesses from excessive damage awards and frivolous suits.

This legislation would also hold non-manufacturing product sellers liable in product liability cases when their own wrongful conduct is responsible for the harm and thus reduce the exposure of innocent product sellers, lessors and renters to lawsuits when they are simply present in a product's chain of distribution or solely due to product ownership. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

In the end, we believe that enactment of the Small Business Liability Reform Act of 2003 will inject more fairness into the legal system and reduce unnecessary litigation and legal costs. We also believe that it protects the rights of those with legitimate claims. We thank you again for your support of these common sense reforms and look forward to working with you to ensure the success of this important legislation.

Sincerely,

American Automotive Leasing Association.
American Council of Engineering Companies.
American Insurance Association.
American Machine Tool Distributors Association.
American Rental Association.
Associated Builders and Contractors.
Associated Equipment Distributors.
Automotive Parts and Service Alliance.
Citizens for Civil Justice Reform.
Coalition for Uniform Product Liability Law.
Equipment Leasing Association.
Independent Insurance Agents and Brokers of America.
International Housewares Association.
International Mass Retail Association.
Motorcycle Industry Council.
National Association of Convenience Stores.
National Association of Manufacturers.
National Association of Wholesaler-Distributors.
National Federation of Independent Business.
National Grocers Association.
National Restaurant Association.
National Retail Federation.
National Small Business United.
NPES—Association for Suppliers of Printing, Publishing & Converting Technologies.
Plumbing-Heating-Cooling Contractors—National Association.
Small Business Legislative Council.
Society of Independent Gasoline Marketers of America.
Specialty Equipment Market Association.
Tire Industry Association.
Truck Renting and Leasing Association.
U.S. Chamber of Commerce.

MOTORCYCLE INDUSTRY COUNCIL,
Arlington, VA, July 30, 2003.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the over 300 members of the Motorcycle Industry Council (MIC), I want to express our strong support for the ''Small Business Liability Reform Act of 2003'' and extend sincere thanks for your sponsorship of this important legislation. MIC is a nonprofit national trade association that represents manufacturers and distributors of motorcycles, motorcycle parts and accessories, and members of allied trades. A large number of our member companies are small businesses.

This Act, which would cap punitive damages and abolish joint liability for non-economic damages for businesses with fewer than 25 employees, is a common sense approach to sustaining the health of America's small businesses. It would hold non-manufacturing product sellers liable in product liability cases when they own wrongful conduct is responsible for the harm and thus reduce the exposure of innocent product sellers to lawsuits when they are simply present in a product's chain of distribution. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

The frequency and high cost of litigation is a matter of great concern to the business community. Few companies have been left unmarked by the steep increases in product liability insurance costs or the crises in the availability of product liability insurance. The impact on small businesses is especially burdensome. the current civil justice system puts small business owners across the country in jeopardy of losing their livelihood, their employees and their futures when faced with involvement in lawsuits through no fault of their own. This Act would serve to help protect these businesses from excessive damage awards and the costs of defending against frivolous suits.

Sensible reform brings predictability to the product liability process, stabilizes product liability insurance rates and reduces the overall costs related to product liability litigation imposed on manufacturers, sellers, and ultimately, consumers. This legislation is an important step in alleviating the devastating effects that the current system can have on small businesses and their millions of employees, which continuing to ensure that businesses remain accountable for negligence and intentional wrongdoing and that consumers have full access to the court system for redress.

Again, thank you for your sponsorship of this legislation which is so important to our small business member companies.

Sincerely,

KATHY R. VAN KLEECK,
Vice President, Government Relations.

NATIONAL ASSOCIATION
OF WHOLESALER-DISTRIBUTORS,
Washington, DC, July 30, 2003.

Hon. MITCH MCCONNELL,
Hon. JOE LIEBERMAN,
U.S. Senate, Washington, DC.

DEAR SENATORS MCCONNELL AND LIEBERMAN: I write on behalf of the National Association of Wholesaler-Distributors (NAW) to express our strong support for the ''Small Business Liability Reform Act of 2003.''

For nearly two decades, NAW has vigorously advocated Federal civil justice reform legislation to curb unnecessary lawsuits and the wasteful legal costs they generate. Title I of the bill (Small Business Lawsuit Abuse Protection), which proposes modest restraints in the application of joint liability and punitive damages with regard to small business defendants, takes a major step in that direction.

So, too, does the product seller liability standard proposed in Title II (Product Seller Fair Treatment). Currently in a majority of states, non-manufacturing product sellers such as wholesaler-distributors and retailers may be sued for product-related injuries on the same basis as the product manufacturer. Consequently, product sellers are routinely joined in product liability lawsuits regardless of fault. Despite the fact that product sellers are rarely ultimately responsible for the damages awarded to successful claimants, they do have to mount their defense and pay the legal costs attendant to it. This unnecessary litigation drives up costs that must be passed along and absorbed by consumers in the form of higher prices, and serves the interests of no one.

By providing that non-manufacturing product sellers will be liable for product-related injuries that are caused by their own negligence, intentional misconduct, beeches of their own express warranties, and when the liable manufacturer is unreachable by judicial process, Title II of the bill corrects this serious flaw in our product liability system. This standard of liability is balanced and fair. It appropriately reflects the different roles of manufacturers, wholesaler-distributors and other non-manufacturing product sellers in the chain of production and distribution, promotes product safety by laying responsibility for harm at the doorstep of the culpable party, and ensures that those who are harmed through no fault of their own by defective, unreasonably dangerous products are fully compensated for their injuries.

Thank you for your leadership in sponsoring this important legislation. I look forward to working with you toward its prompt enactment.

Sincerely,

JAMES A. ANDERSON, Jr.,
Vice President—Government Relations.

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
Washington DC, July 30, 2003.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I would like to express our strong support for the Small business Liability Reform Act of 2003. NFIB strongly supports this legislation which would restore common sense to our civil justice system—one that takes a particularly heavy toll on the smallest of America's businesses.

The frequency and high cost of litigation is a matter of growing concern to small businesses across the country. Today's civil justice system presents a significant disincentive to business start-ups and continued operations. If sued, business owners know they have to choose between a long and costly trial or an expensive settlement. Business owners across the nation risk losing their livelihood, their employees and their future every time they are confronted with an unnecessary lawsuit.

This legislation would make two reforms that have topped the small business community's agenda for years: cap punitive damages and abolish joint liability for non-economic damages for those with fewer than 25 employees. These reforms have been among the recommendations of the White House Conference on Small Business since the early 1980s—and the time has come to protect the smallest of small businesses from excessive damage awards and frivolous suits.

This bill would also hold non-manufacturing product sellers liable in product liability cases when their own wrongful conduct is responsible for the harm and thus reduce the exposure of innocent product sellers, lessors and renters to lawsuits when they are simply present in a product's chain of distribution or solely due to product ownership. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

In the end, we believe that enactment of the Small Business Liability Reform Act will inject more fairness into the legal system and reduce unnecessary litigation and legal costs. We also believe that it protects the rights of those with legitimate claims. We thank you for your consideration of these common sense reforms and look forward to working with you to ensure the success of this important legislation.

Sincerely,

DAN DANNER,
Senior Vice President,
Public Policy.

S. 1546

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Small Business Liability Reform Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SMALL BUSINESS LAWSUIT ABUSE PROTECTION

Sec. 101. Findings.
Sec. 102. Definitions.
Sec. 103. Limitation on punitive damages for small businesses.
Sec. 104. Limitation on joint and several liability for noneconomic loss for small businesses.
Sec. 105. Exceptions to limitations on liability.
Sec. 106. Preemption and election of State nonapplicability.

TITLE II—PRODUCT SELLER FAIR TREATMENT

Sec. 201. Findings; purposes.
Sec. 202. Definitions.
Sec. 203. Applicability; preemption.
Sec. 204. Liability rules applicable to product sellers, renters, and lessors.
Sec. 205. Federal cause of action precluded.

TITLE III—EFFECTIVE DATE

Sec. 301. Effective date.

TITLE I—SMALL BUSINESS LAWSUIT ABUSE PROTECTION

SEC. 101. FINDINGS.

Congress finds that—

(1) the United States civil justice system is inefficient, unpredictable, unfair, costly, and impedes competitiveness in the marketplace for goods, services, business, and employees;

(2) the defects in the United States civil justice system have a direct and undesirable effect on interstate commerce by decreasing the availability of goods and services in commerce;

(3) there is a need to restore rationality, certainty, and fairness to the legal system;

(4) the spiralling costs of litigation and the magnitude and unpredictability of punitive damage awards and noneconomic damage awards have continued unabated for at least the past 30 years;

(5) the Supreme Court of the United States has recognized that a punitive damage award can be unconstitutional if the award is grossly excessive in relation to the legitimate interest of the government in the punishment and deterrence of unlawful conduct;

(6) just as punitive damage awards can be grossly excessive, so can it be grossly excessive in some circumstances for a party to be held responsible under the doctrine of joint and several liability for damages that party did not cause;

(7) as a result of joint and several liability, entities including small businesses are often brought into litigation despite the fact that their conduct may have little or nothing to do with the accident or transaction giving rise to the lawsuit, and may therefore face increased and unjust costs due to the possibility or result of unfair and disproportionate damage awards;

(8) the costs imposed by the civil justice system on small businesses are particularly acute, since small businesses often lack the resources to bear those costs and to challenge unwarranted lawsuits;

(9) due to high liability costs and unwarranted litigation costs, small businesses face higher costs in purchasing insurance through interstate insurance markets to cover their activities;

(10) liability reform for small businesses will promote the free flow of goods and services, lessen burdens on interstate commerce, and decrease litigiousness; and

(11) legislation to address these concerns is an appropriate exercise of the powers of Congress under clauses 3, 9, and 18 of section 8 of article I of the Constitution of the United States, and the 14th amendment to the Constitution of the United States.

SEC. 102. DEFINITIONS.

In this title:

(1) CRIME OF VIOLENCE.—The term ''crime of violence'' has the same meaning as in section 16 of title 18, United States Code.

(2) DRUG.—The term ''drug'' means any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) that was not legally prescribed for use by the defendant or that was taken by the defendant other than in accordance with the terms of a lawfully issued prescription.

(3) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(4) HARM.—The term ''harm'' means any physical injury, illness, disease, or death or damage to property.

(5) HATE CRIME.—The term ''hate crime'' means a crime described under section 1(b) of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(6) INTERNATIONAL TERRORISM.—The term ''international terrorism'' has the same meaning as in section 2331 of title 18, United States Code.

(7) NONECONOMIC LOSS.—The term ''noneconomic loss'' means loss for physical or emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), injury to reputation, or any other nonpecuniary loss of any kind or nature.

(8) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(9) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded against any person or entity to punish or deter such person, entity, or others from engaging in similar behavior in the future. Such term does not include any civil penalties, fines, or treble damages that are assessed or enforced by an agency of State or Federal government pursuant to a State or Federal statute.

(10) SMALL BUSINESS.—

(A) IN GENERAL.—The term ''small business'' means any unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has fewer than 25 full-time employees as determined on the date the civil action involving the small business is filed.

(B) CALCULATION OF NUMBER OF EMPLOYEES.—For purposes of subparagraph (A), the number of employees of a subsidiary of a wholly owned corporation includes the employees of—

(i) a parent corporation; and

(ii) any other subsidiary corporation of that parent corporation.

(11) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, commonwealth, territory, or possession.

SEC. 103. LIMITATION ON PUNITIVE DAMAGES FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 105, in any civil action against a small business, punitive damages may, to the extent permitted by applicable Federal or State law, be awarded against the small business only if the claimant establishes by clear and convincing evidence that conduct carried out by that defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.

(b) LIMITATION ON AMOUNT.—In any civil action against a small business, punitive damages awarded against a small business shall not exceed the lesser of—

(1) three times the total amount awarded to the claimant for economic and noneconomic losses; or

(2) $250,000,

except that the court may make this subsection inapplicable if the court finds that the plaintiff established by clear and convincing evidence that the defendant acted with specific intent to cause the type of harm for which the action was brought.

(c) APPLICATION BY THE COURT.—The limitation prescribed by this section shall be applied by the court and shall not be disclosed to the jury.

SEC. 104. LIMITATION ON JOINT AND SEVERAL LIABILITY FOR NONECONOMIC LOSS FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 105, in any civil action against a small business, the liability of each defendant that is a small business, or the agent of a small business, for noneconomic loss shall be determined in accordance with subsection (b).

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—In any civil action described in subsection (a)—

(A) each defendant described in that subsection shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable; and

(B) the court shall render a separate judgment against each defendant described in that subsection in an amount determined under subparagraph (A).

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the harm to the claimant, regardless of whether or not the person is a party to the action.

SEC. 105. EXCEPTIONS TO LIMITATIONS ON LIABILITY.

The limitations on liability under sections 103 and 104 do not apply—

(1) to any defendant whose misconduct—

(A) constitutes—

(i) a crime of violence;

(ii) an act of international terrorism; or

(iii) a hate crime;

(B) results in liability for damages relating to the injury to, destruction of, loss of, or loss of use of, natural resources described in—

(i) section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2702(b)(2)(A)); or

(ii) section 107(a)(4)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)(4)(C));

(C) involves—

(i) a sexual offense, as defined by applicable State law; or

(ii) a violation of a Federal or State civil rights law; or

(D) occurred at the time the defendant was under the influence (as determined under applicable State law) of intoxicating alcohol or a drug, and the fact that the defendant was under the influence was the cause of any harm alleged by the plaintiff in the subject action; or

(2) to any cause of action which is brought under the provisions of title 31, United States Code, relating to false claims (31 U.S.C. 3729 through 3733) or to any other cause of action brought by the United States relating to fraud or false statements.

SEC. 106. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

(a) PREEMPTION.—Subject to subsection (b), this title preempts the laws of any State to the extent that State laws are inconsistent with this title.

(b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This title does not apply to any action in a State court against a small business in which all parties are citizens of the State, if the State enacts a statute—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this title does not apply as of a date certain to such actions in the State; and

(3) containing no other provision.

TITLE II—PRODUCT SELLER FAIR TREATMENT

SEC. 201. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) although damage awards in product liability actions may encourage the production of safer products, they may also have a direct effect on interstate commerce and consumers of the United States by increasing the cost of, and decreasing the availability of, products;

(2) some of the rules of law governing product liability actions are inconsistent within and among the States, resulting in differences in State laws that may be inequitable with respect to plaintiffs and defendants and may impose burdens on interstate commerce;

(3) product liability awards may jeopardize the financial well-being of individuals and industries, particularly the small businesses of the United States;

(4) because the product liability laws of a State may have adverse effects on consumers and businesses in many other States, it is appropriate for the Federal Government to enact national, uniform product liability laws that preempt State laws; and

(5) under clause 3 of section 8 of article I of the United States Constitution, it is the constitutional role of the Federal Government to remove barriers to interstate commerce.

(b) PURPOSES.—The purposes of this title, based on the powers of the United States under clause 3 of section 8 of article I of the United States Constitution, are to promote the free flow of goods and services and lessen the burdens on interstate commerce, by—

(1) establishing certain uniform legal principles of product liability that provide a fair balance among the interests of all parties in the chain of production, distribution, and use of products; and

(2) reducing the unacceptable costs and delays in product liability actions caused by excessive litigation that harms both plaintiffs and defendants.

SEC. 202. DEFINITIONS.

In this title:

(1) ALCOHOL PRODUCT.—The term ''alcohol product'' includes any product that contains not less than ½ of 1 percent of alcohol by volume and is intended for human consumption.

(2) CLAIMANT.—The term ''claimant'' means any person who brings an action covered by this title and any person on whose behalf such an action is brought. If such an

action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(3) COMMERCIAL LOSS.—The term ''commercial loss'' means—

(A) any loss or damage solely to a product itself;

(B) loss relating to a dispute over the value of a product; or

(C) consequential economic loss, the recovery of which is governed by applicable State commercial or contract laws that are similar to the Uniform Commercial Code.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means damages awarded for economic and noneconomic losses.

(5) DRAM-SHOP.—The term ''dram-shop'' means a drinking establishment where alcoholic beverages are sold to be consumed on the premises.

(6) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for that loss is allowed under applicable State law.

(7) HARM.—The term ''harm'' means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss.

(8) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who—

(i) is engaged in a business to produce, create, make, or construct any product (or component part of a product); and

(ii)(I) designs or formulates the product (or component part of the product); or

(II) has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) that are created or affected when, before placing the product in the stream of commerce, the product seller—

(i) produces, creates, makes, constructs and designs, or formulates an aspect of the product (or component part of the product) made by another person; or

(ii) has engaged another person to design or formulate an aspect of the product (or component part of the product) made by another person; or

(C) any product seller not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(9) NONECONOMIC LOSS.—The term ''noneconomic loss'' means loss for physical or emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), injury to reputation, or any other nonpecuniary loss of any kind or nature.

(10) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(11) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(12) PRODUCT LIABILITY ACTION.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the term ''product liability action'' means a civil action brought on any theory for a claim for any physical injury, illness, disease, death, or damage to property that is caused by a product.

(B) The following claims are not included in the term ''product liability action'':

(i) NEGLIGENT ENTRUSTMENT.—A claim for negligent entrustment.

(ii) NEGLIGENCE PER SE.—A claim brought under a theory of negligence per se.

(iii) DRAM-SHOP.—A claim brought under a theory of dram-shop or third-party liability arising out of the sale or providing of an alcoholic product to an intoxicated person or minor.

(13) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who in the course of a business conducted for that purpose—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(14) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, commonwealth, territory, or possession.

SEC. 203. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this title governs any product liability action brought in any Federal or State court.

(2) ACTIONS FOR COMMERCIAL LOSS.—A civil action brought for commercial loss shall be governed only by applicable State commercial or contract laws that are similar to the Uniform Commercial Code.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes a State law only to the extent that the State law applies to an issue covered by this title. Any issue that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable Federal or State law.

(c) EFFECT ON OTHER LAW.—Nothing in this title shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any State law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief, for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8))).

SEC. 204. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action covered under this title, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes that—

(A)(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of the harm to the claimant;

(B)(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused the harm to the claimant; or

(C)(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) the intentional wrongdoing caused the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product, if—

(A) the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product that allegedly caused the claimant's harm.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product, if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant is or would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability

of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) DEFINITION.—For purposes of paragraph (2), and for determining the applicability of this title to any person subject to that paragraph, the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

(2) LIABILITY.—Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 202(13)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of that product.

SEC. 205. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under this title based on section 1331 or 1337 of title 28, United States Code.

TITLE III—EFFECTIVE DATE

SEC. 301. EFFECTIVE DATE.

This Act shall take effect with respect to any civil action commenced after the date of the enactment of this Act without regard to whether the harm that is the subject of the action occurred before such date.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1547. A bill to amend title XXI of the Social Security Act to make a technical correction with respect to the definition of qualifying State; considered and passed.

Mr. BINGAMAN. Mr. President, last evening, I introduced two bills with Senator DOMENICI and yet another one today to address a technical, but very important problem that the State of New Mexico and a number of other States, including that of the Majority Leader, have faced with respect to the Children's Health Insurance Program, or CHIP. When CHIP was established by President Clinton and the Congress in 1997, an inequity was built into the program whereby certain states that had been more progressive and had expanded coverage to children through Medicaid prior to the enactment of the bill were penalized.

In the last Congress and again this year, I introduced the ''Children's Health Equity Act of 2003'' to address this problem for a number of States, including New Mexico, Vermont, Washington, and Tennessee. Our states have been unable to fully access Federal CHIP funds because the previous expansion of Medicaid to children was not recognized or ''grandfathered,'' while certain other States such as New York, Florida, and Pennsylvania were explicitly ''grandfathered'' in and their State expansions to children were allowed to be covered with CHIP dollars.

The National Governors' Association has long recognized this inequity and has, in fact, a policy that read, ''The Governors believe that it is critical that innovative states not be penalized for having expanded coverage to children before the enactment of S–CHIP, which provides enhanced funding to meet these goals. To this end, the Governors support providing additional funding flexibility to states that had already significantly expanded coverage to the majority of uninsured children in their states.''

S. 621, the ''Children's Health Equity Act,'' did precisely that and the critical language from our legislation was included in S. 312 by Senators Rockefeller and Chafee, which addressed both expired and expiring CHIP funds and the problem addressed by S. 621. We appreciated their recognition of that issue and supported the passage of that legislation after an extensive set of negotiations and compromises on the language.

For New Mexico, an important issue is that our State expanded coverage up to 185 percent of poverty prior to the enactment of CHIP. Because of this, the children in our State between 100 percent and 185 percent of poverty are ineligible for CHIP. Thus, New Mexico has been allocated $266 million from CHIP between fiscal years 1998 and 2002, and yet has only been able to spend slightly over $26 million as of the end of the last fiscal year. In other words, New Mexico has been allowed to spend less than 10 percent of its Federal CHIP allocations. This, despite the fact our State ranks 2nd in the Nation in the percentage of children who are uninsured.

It is a travesty that money set-aside for New Mexico to address our children's coverage problem is not available to be spent and is thereby redistributed to other States who have far lower uninsured rates and whose children between 100 and 185 percent of poverty are eligible for Federal CHIP dollars. The children in those States are certainly no more worthy of health insurance coverage than the children of New Mexico.

The consequences for the children of New Mexico are enormous. According to the Census Bureau, New Mexico has an estimated 114,000 uninsured children. Put another way, almost 21 percent of all the children in New Mexico are uninsured, despite the fact New Mexico has expanded coverage all the way to 235 percent of poverty. Again, this is the 2nd highest rate of uninsured children in the country.

This is a result of the fact that an estimated 80 percent of the uninsured children in New Mexico are below 200 percent of poverty. These children are often eligible for either Medicaid or CHIP but currently unenrolled. With the exception of those few children between 185 and 200 percent of poverty who are eligible for the enhanced federal CHIP dollars, all of the remaining children below 185 percent of poverty in New Mexico are denied CHIP funding despite their need.

For New Mexico, the Senate language that was in S. 621 and included in S. 312 would have allowed New Mexico to spend up to 20 percent of its Federal CHIP allotments on children enrolled between 150 and 185 percent of poverty. Unfortunately, the House of Representatives chose to modify the Senate language in such a manner through the introduction and passage of H.r. 2854 that New Mexico may no longer be eligible.

The House of Representatives, which did not include language addressing New Mexico's problem in the first place, chose to edit the Senate language that ''grandfathered'' States that had previous expanded coverage ''up to'' 185 percent of poverty and above and replaced it with language that the State had to have expanded coverage to ''at least'' 185 percent of poverty.

This sounds rather technical, but this slight difference may ironically allow all the other states our bill intended to help, who expanded coverage beyond 185 percent of poverty, such as Vermont and Washington, to be ''grandfathered'' but not New Mexico. It is my contention, after reviewing the materials from our State that our State expanded coverage to 185 percent of poverty and operates a full Medicaid benefit at 185 percent of poverty and therefore should qualify as a State to be ''grandfathered.'' Unfortunately, the language change has left the Centers for Medicare and Medicaid Services, or CMS, uncertain of our State's eligibility, as some believe the State has only some up to 185 percent of poverty, or just short of that level, and therefore does not meet the test of ''at least'' 185 percent of poverty.

For six long years, the States of Washington, New Mexico, Vermont, and others have sought to fix the inequity in CHIP. Senator Slade Gorton of Washington had the original legislation to fix this problem and I picked up, modified, and reintroduced that legislation in the last two sessions of Congress. After six long years, to now find that New Mexico may be the only State excluded by the House change and 0.0001 percentage points, is both outrageous and unacceptable.

I contend that the Centers for Medicare and Medicaid Services, or CMS, can still make a determination that New Mexico meets this revised standard under H.R. 2854 and urge them to do so as soon possible.

However, in the meantime, since New Mexico's status is now in question. I introduced two bills last night and another one today with Senator DOMENICI that all clarify that New Mexico qualifies. The first includes New Mexico as a ''qualified state'' explicitly. This would leave no question at all. The second bill clarifies that a State found to be a partial percentage point below 185 percent of poverty would round up to the nearest number, that being 185 percent of poverty, and be eligible. That would also undoubtedly ensure New Mexico's eligibility. In order to release our hold, I have asked that the bill I introduced changing the percentage that a qualified state must be changed from 185 to

184 percent of poverty be approved by the State in conjunction with H.R. 2854. Unfortunately, our bill will then have to be taken up and passed by the House of Representatives and signed into law by the President.

I have received a letter from Chairman TAUZIN, and Ranking Member DINGELL of the House Energy and Commerce Committee ensuring the intent of H.R. 2854 is to include New Mexico and provides their commitment that they will ensure any technical problem our State has with the language will be fixed immediately upon return from the August recess. I thank them for their commitment to New Mexico.

Once again, many States are accessing their CHIP allotments to cover kids at poverty levels far below New Mexico's current or past eligibility levels. The children in those states are certainly no more worthy and the children of New Mexico deserve better than they are getting from the Federal Government. I accept the commitment made by the leadership of the Senate Finance Committee and the House Energy and Commerce Committee to fix this problem and therefore urge the passage of both H.R. 2854 and the original legislation that I introduced today.

I ask unanimous consent that the letter I referred to be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JULY 31, 2003.

Senator JEFF BINGAMAN,
Senator PETE DOMENICI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS BINGAMAN AND DOMENICI:

We are writing to provide our commitment to pass a technical corrections bill in September that will provide the proper technical fix that will allow New Mexico to use 20% of their SCHIP allotments to pay for certain Medicaid eligible children.

Prior to House passage of H.R. 2854, CMS had provided technical assistance that indicated that New Mexico would be covered under the language in the bill. The authors of the bill intended that New Mexico would be covered, and drafted the language accordingly, based on the information provided by CMS.

We have subsequently learned that New Mexico may not be able to use the 20% because of potential flaws in the language contained in H.R. 2854. This was not our intent, and we are committing to passing a technical corrections bill in September that will allow New Mexico to use these funds.

Sincerely,

CONGRESSMAN BILLY TAUZIN,
Chairman of the House Committee on Energy & Commerce.
CONGRESSMAN JOHN D. DINGELL,
Ranking Member of the House Committee on Energy & Commerce.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. FRIST, Mr. DASCHLE, Mr. DOMENICI, Mr. BINGAMAN, Mr. INHOFE, Mr. JEFFORDS, Mr. THOMAS, Mr. VOINOVICH, Mr. CONRAD, Mrs. LINCOLN, Mr. COLEMAN, Mr. DORGAN, Mr. BOND, Mr. HARKIN, Mr. DAYTON, Mr. DURBIN, Mr. TALENT, Mr. NELSON of Nebraska, and Mr. BROWNBACK):

S. 1548. A bill to amend the Internal Revenue Code of 1986 to provide incentives for the production of renewable fuels and to simplify the administration of the Highway Trust Fund fuel excise taxes, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, as Members of the this Senate are well aware, I have worked for many years on the development of renewable fuels in the marketplace. Twenty-five years ago we created an alcohol fuels tax incentive to promote the use of ethanol. Today, I am introducing legislation that will simplify the excise tax collection system for all transportation and renewable fuels.

This legislation reforms the alcohol fuels tax credit and creates a new ''Volumetric Ethanol Excise Tax Credit'' (VEETC). In addition to streamlining the alcohol fuels tax credit, this legislation creates a new tax credit for biodiesel.

Under the VEETC we accomplish three objectives: First, improve the tax collection system for renewable fuels; second, increase the revenue source for the Highway Trust Fund.

This is because the full amount of user excise taxes levied will be collected and remitted to the Highway Trust Fund (HTF). In simplifying the tax collection system, all user excise taxes levied on both gasoline and ethanol blended fuels would be collected at 18.4 cents per gallon; and all excise taxes levied on diesel and biodiesel blended fuels would be collected at 24.4 cents per gallon.

On average, the proposal would generate more than $2 billion per year in additional HTF revenue, which would improve the ability of the federal government to address the nation's transportation infrastructure needs; and third, we will enhance the delivery of renewable fuels in the marketplace.

The federal government's tax collection system will work in concert with the petroleum industry's and independent terminal's fuel delivery system.

The Grassley/Baucus amendment provides tremendous new flexibility to gasoline refiners, marketers, and ethanol producers.

It eliminates the restrictive blend levels, 5.7 percent, 7.7 percent and 10 percent dictated by the Tax Code to reflect obsolete Clean Air Act requirements, providing significant flexibility to oil companies to blend as much or as little ethanol or biodiesel to meet their octane or volume needs.

It streamlines the tax collection system to avoid the potential for fraud while accelerating the refund mechanism.

It provides new market opportunities for ethanol and biodiesel in off-road uses, E–85 and ETBE, and, of course, it resolves a longstanding issue with regard to the Highway Trust Fund.

The ''Volumetric Ethanol Excise Tax Credit Act of 2003'' is a forward-thinking piece of legislation that deserves universal support and it will address a number of tax issues that have created roadblocks for the renewable industry for a number of years.

Specifically, the tax amendment will do the following: eliminate the negative impact of the ethanol tax incentive on the Highway Trust Fund; eliminate the waste, fraud and abuse of the excise tax collection system, which means that 18.4¢ per gallon of each gallon of ethanol-blend fuel will be remitted to the U.S. Treasury; streamline the delivery of renewable fuels to petroleum blenders at the terminal rack because fuel mixtures will not be based on the Clean Air Act requirements of 5.7, 7.7 or 10 percent blends—the tax credit is allowed for any blend of ethanol and gasoline; streamline the tax refund system for below the rack blenders to allow a tax refund of 52 cents per gallon on each gallon of ethanol blended with gasoline to be paid within 20 days of blending gasoline with ethanol; Eliminate the need of the alcohol fuels income tax credit that is subject to the alternative minimum tax; any taxpayer eligible for the alcohol fuels tax credit will be able to use the volume ethanol excise tax credit system, which means they will be able to file for a refund for every gallon of ethanol used in the marketplace without regard to the income of the taxpayer or whether the ethanol is used in a taxed fuel or tax exempt fuel.

Create a new tax credit for biodiesel—$1.00 per gallon for biodiesel made from virgin oils derived from agricultural products and animal fats; and $.50 per gallon for biodiesel made from agricultural products and animal fats.

Allow the credit to be claimed in both taxable and nontaxable markets; tax exempt fleet fuel programs; off road diesel markets (died diesel).

Streamline the use of biodiesel at the terminal rack—the tax structure and credit will encourage petroleum blenders to blend biodiesel as far upstream as possible, which under the RFS and Minnesota's 2 percent volume requirement will allow more biodiesel to be used in the marketplace.

Streamline the tax refund system for below the rack blenders to allow a tax refund of the biodiesel tax credit on each gallon of biodiesel blended with diesel, dyed and undyed, to be paid within 20 days of blending.

The alternative minimum tax (AMT) will not be an issue for biodiesel; any taxpayer eligible for the biodiesel tax credit will be able use the volume biodiesel excise tax credit system, which means they will be able to file for a refund for every gallon of biodiesel used in the marketplace regard to the income of the taxpayer or whether the ethanol is used in a taxed fuel or tax exempt fuel.

No affect on the Highway Trust Fund—the biodiesel tax credit will be paid for out of the ''General fund'' not the ''Highway Trust Fund.''

Eliminate the E85 AMT issue: any taxpayer eligible for the alcohol fuels tax credit will be able use the volume ethanol excise tax credit system, which means they will be able to file for a refund for every gallon of ethanol used in the marketplace without regard to the income of the taxpayer or whether the ethanol is used in a taxed fuel or tax exempt fuel.

Allow the alcohol fuels tax credit to be claimed in both taxable and nontaxable markets;

Streamline the tax refund system for below the rack blenders to allow a tax refund of the alcohol fuels credit on each gallon of ethanol blended with gasoline to be paid within 20 days of blending.

I feel strongly about the legislation because it eliminates the tax infrastructure, and fuel delivery impediments that have been problematic throughout the history of the renewable duels industry and encourage you to join us in working to enact this legislation during this Congress.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1548

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Volumetric Ethanol Excise Tax Credit (VEETC) Act of 2003''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. INCENTIVES FOR BIODIESEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by inserting after section 40A the following new section:

''SEC. 40B. BIODIESEL USED AS FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

''(B) QUALIFIED BIODIESEL MIXTURE.—The term 'qualified biodiesel mixture' means a mixture of biodiesel and diesel fuel which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the taxpayer producing such mixture.

''(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

''(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

''(ii) for the taxable year in which such sale or use occurs.

''(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(2) BIODIESEL CREDIT.—

''(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

''(i) is used by the taxpayer as a fuel in a trade or business, or

''(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

''(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

''(3) CREDIT FOR AGRI-BIODIESEL.—

''(A) IN GENERAL.—Subject to subparagraph (B), in the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.

''(B) CERTIFICATION FOR AGRI-BIODIESEL.—Subparagraph (A) shall apply only if the taxpayer described in paragraph (1)(A) or (2)(A) obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the agri-biodiesel which identifies the product produced.

''(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any agri-biodiesel shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such agri-biodiesel solely by reason of the application of section 6426 or 6427(e).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BIODIESEL.—The term 'biodiesel' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter for use in diesel-powered engines which meet—

''(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

''(B) the requirements of the American Society of Testing and Materials D6751.

''(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils. Such term shall include esters derived from vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

''(3) BIODIESEL MIXTURE NOT USED AS A FUEL, ETC.—

''(A) IMPOSITION OF TAX.—If—

''(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

''(ii) any person—

''(I) separates such biodiesel from the mixture, or

''(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of the mixture.

''(B) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) as if such tax were imposed by section 4081 and not by this chapter.

''(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2005.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following new paragraph:

''(17) the biodiesel fuels credit determined under section 40B(a).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year ending on or before the date of the enactment of section 40B.''.

(2)(A) Section 87, as amended by this Act, is amended—

(i) by striking ''and'' at the end of paragraph (1),

(ii) by striking the period at the end of paragraph (2) and inserting '', and'',

(iii) by adding at the end the following new paragraph:

''(3) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40B(a).'', and

(iv) by striking ''**FUEL CREDIT**'' in the heading and inserting ''**AND BIODIESEL FUELS CREDITS**''.

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking ''fuel credit'' and inserting ''and biodiesel fuels credits''.

(3) Section 196(c) is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting '', and'', and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40B(a).''.

(4) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 40A the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 3. ALCOHOL FUEL AND BIODIESEL MIXTURES EXCISE TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

''SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

''(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

''(1) the alcohol fuel mixture credit, plus

''(2) the biodiesel mixture credit.

''(b) ALCOHOL FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the

applicable amount for each gallon of alcohol used by the taxpayer in producing an alcohol fuel mixture.

''(2) APPLICABLE AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 52 cents (51 cents in the case of any sale or use after 2004).

''(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

''(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term 'alcohol fuel mixture' is a mixture which—

''(A) consists of alcohol and a taxable fuel, and

''(B) is sold for use or used as a fuel by the taxpayer producing the mixture.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include—

''(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

''(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

''(B) TAXABLE FUEL.—The term 'taxable fuel' has the meaning given such term by section 4083(a)(1).

''(5) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2010.

''(c) BIODIESEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any qualified biodiesel mixture.

''(2) APPLICABLE AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

''(B) AMOUNT FOR AGRI-BIODIESEL.—

''(i) IN GENERAL.—Subject to clause (ii), in the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

''(ii) CERTIFICATION FOR AGRI-BIODIESEL.—Clause (i) shall apply only if the taxpayer described in paragraph (1) obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the agri-biodiesel which identifies the product produced.

''(3) DEFINITIONS.—Any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

''(4) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2005.

''(d) MIXTURE NOT USED AS A FUEL, ETC.—

''(1) IMPOSITION OF TAX.—If—

''(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or qualified biodiesel mixture, respectively, and

''(B) any person—

''(i) separates such alcohol or biodiesel from the mixture, or

''(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

''(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.''.

(b) REGISTRATION REQUIREMENT.—Section 4101(a) (relating to registration) is amended by inserting ''and every person producing biodiesel (as defined in section 40B(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))'' after ''4091''.

(c) CONFORMING AMENDMENTS.—

(1) Section 40(c) is amended by striking ''section 4081(c), or section 4091(c)'' and inserting ''section 4091(c), section 6426, section 6427(e), or section 6427(f)''.

(2) Section 40(d)(4)(B) is amended by striking ''or 4081(c)''.

(3) Section 40(e)(1) is amended—

(A) by striking ''2007'' in subparagraph (A) and inserting ''2010'', and

(B) by striking ''2008'' in subparagraph (B) and inserting ''2011''.

(4) Section 40(h) is amended—

(A) by striking ''2007'' in paragraph (1) and inserting ''2010'', and

(B) by striking '', 2006, or 2007'' in the table contained in paragraph (2) and inserting ''through 2010''.

(5) Section 4041(b)(2)(B) is amended by striking ''a substance other than petroleum or natural gas'' and inserting ''coal (including peat)''.

(6) Paragraph (1) of section 4041(k) is amended to read as follows:

''(1) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of the sale or use of any liquid at least 10 percent of which consists of alcohol (as defined in section 6426(b)(4)(A)), the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(c).''.

(7) Section 4081 is amended by striking subsection (c).

(8) Paragraph (2) of section 4083(a) is amended to read as follows:

''(2) GASOLINE.—The term 'gasoline'—

''(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)) or a denaturant of alcohol (as defined in section 6426(b)(4)(A)), and

''(B) includes, to the extent prescribed in regulations—

''(i) any gasoline blend stock, and

''(ii) any product commonly used as an additive in gasoline.

For purposes of subparagraph (B)(i), the term 'gasoline blend stock' means any petroleum product component of gasoline.''.

(9) Section 6427 is amended by inserting after subsection (d) the following new subsection:

''(e) ALCOHOL OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS FUELS.—Except as provided in subsection (k)—

''(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture.

''(2) USED AS FUEL.—If alcohol (as defined in section 40(d)(1)) or biodiesel (as defined in section 40B(d)(1)) or agri-biodiesel (as defined in section 40B(d)(2)) which is not in a mixture with a taxable fuel (as defined in section 4083(a)(1))—

''(A) is used by any person as a fuel in a trade or business, or

''(B) is sold by any person at retail to another person and placed in the fuel tank of such person's vehicle,

the Secretary shall pay (without interest) to such person an amount equal to the alcohol credit (as determined under section 40(b)(2)) or the biodiesel credit (as determined under section 40B(b)(2)) with respect to such fuel.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any mixture with respect to which an amount is allowed as a credit under section 6426.

''(4) TERMINATION.—This subsection shall not apply with respect to—

''(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) or alcohol (as so defined) sold or used after December 31, 2010, and

''(B) any qualified biodiesel mixture (within the meaning of section 6426(c)(1)) or biodiesel (as so defined) or agri-biodiesel (as so defined) sold or used after December 31, 2005.''.

(10) Subsection (f) of section 6427 is amended to read as follows:

''(f) AVIATION FUEL USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

''(1) IN GENERAL.—Except as provided in subsection (k), if any aviation fuel on which tax was imposed by section 4091 at the regular tax rate is used by any person in producing a mixture described in section 4091(c)(1)(A) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

''(2) DEFINITIONS.—For purposes of paragraph (1)—

''(A) REGULAR TAX RATE.—The term 'regular tax rate' means the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

''(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(2) thereof.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any aviation fuel with respect to which an amount is payable under subsection (d) or (l).

''(4) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 2007.''.

(11) Paragraphs (1) and (2) of section 6427(i) are amended by inserting ''(f),'' after ''(d),''.

(12) Section 6427(i)(3) is amended—

(A) by striking ''subsection (f)'' both places it appears in subparagraph (A) and inserting ''subsection (e)(1)'',

(B) by striking ''gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))'' in subparagraph (A) and inserting ''a mixture described in section 6426'',

(C) by striking ''subsection (f)(1)'' in subparagraph (B) and inserting ''subsection (e)(1)'',

(D) by striking ''20 days of the date of the filing of such claim'' in subparagraph (B) and inserting ''45 days of the date of the filing of such claim (20 days in the case of an electronic claim)'', and

(E) by striking ''ALCOHOL MIXTURE'' in the heading and inserting ''ALCOHOL FUEL AND BIODIESEL MIXTURE''.

(13) Section 6427(o) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

''(1) any tax is imposed by section 4081, and'',

(B) by striking ''such gasohol'' in paragraph (2) and inserting ''the alcohol fuel mixture (as defined in section 6426(b)(3))'',

(C) by striking ''gasohol'' both places it appears in the matter following paragraph (2) and inserting ''alcohol fuel mixture'', and

(D) by striking ''GASOHOL'' in the heading and inserting ''ALCOHOL FUEL MIXTURE''.

(14) Section 9503(b)(1) is amended by adding at the end the following new flush sentence: ''For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be

determined without reduction for credits under section 6426.''.

(15) Section 9503(b)(4) is amended—

(A) by adding ''or'' at the end of subparagraph (C),

(B) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(C) by striking subparagraphs (E) and (F).

(16) Section 9503(c)(2)(A)(i)(III) is amended by inserting ''(other than subsection (e) thereof)'' after ''section 6427''.

(17) Section 9503(e)(2) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(18) The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

''Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after September 30, 2003.

(e) FORMAT FOR FILING.—The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (b)(12)(D)) not later than September 30, 2003.

By Mr. GREGG.

S. 1550. A bill to change the 30-year treasury bond rate to a composite corporate rate, and to establish a commission on defined benefit plans; to the Committee on Finance.

Mr. GREGG. Mr. President, I come to the floor today to offer legislation to solve a pension funding crisis in our country. The approach incorporated in this bill has been supported in the past by both the American Federation of Labor-Congress of Industrial Organizations and the American business community. As Chairman of the Senate Labor Committee, I must say that these two groups do not often agree and I want to take this historic opportunity to memorialize their agreement.

These groups have supported the approach taken by this legislation because it will generate jobs, improve the financial strength of our corporations, and promote capital investment, all at a time when our economy sorely needs a shot in the arm.

My colleagues will remember that Congress adopted a temporary fix to the problem raised by the artificially low interest rate set by the 30-year Treasury bond. Pension law relies on that the 30-year Treasury bond, which is no longer being issued, to determine funding levels. A low interest rate means employers must put more cash in their plans to satisfy full funding requirements. That temporary fix, enacted in March 2002, is set to expire at the end of this year.

If no action is taken soon, companies will be required to divert billions of dollars from capital investment and job growth in order to satisfy the arbitrary funding rules. For example, General Motors will have to contribute $7 billion if no action is taken by the end of this year. Compounded in businesses across the nation, the total liability adds up to—as the late Carl Sagan used to say—''Billions and Billions.''

Both for collective bargaining and corporate financial planning purposes, a new fix needs to be in place this summer.

In a nutshell, the Pension Stability Act, the legislation I am introducing today, does four things.

First, it extends the temporary fix for a longer period of time—five years—in order to give Congress time to craft a permanent solution. The five year period is important because businesses and their unions need time to plan ahead and to make commitments that they can live up to.

Second, the bill temporarily switches form the out-of-date 30-year Treasury bond as the benchmark rate and adopts for this five-year period a rate based on a high-quality corporate bond index or composite of indices. In shifting to this rate, the legislation assumes that the highest permissible rate of interest is 105 percent of the four-year weighted average of that rate for the first two years—2004 and 2005. For the remaining three years—so as not to permit long term underfunding of pensions—the highest permissible rate of interest drops down to 100 percent of the weighted average.

Third, the legislation incorporates a smooth transition from the out-of-date 30-year Treasury Bond rate to the composite rate that will be used for determining funding obligations. No change in the lump sum distribution rate is made for the first two years. Then, in 20 percent increments, the new rate is phased in. My bill does not take the interest rate to 100 percent of the composite rate, as most commentators assert is the appropriate rate. But my bill makes significant progress toward that goal, and gives Congress time to make informed decisions on this important issue that affects very many lives.

Finally, the Pension Stability Act acknowledges that reasonable people can differ on the best permanent solution to the pension funding issues. The amendment calls for the creation of an independent commission to consider all of the issues relevant to funding of pensions, and making concrete recommendations to Congress. The goal is to take controversy and politics out of the deliberation.

The issues confronting our pension system are too important, and the dollar figures too large, for an internal task force within any administration. Stakeholders in this debate include company financial and human resources officers, stockholders, plan participants and beneficiaries, unions, and financial markets. If they are not included in the process, they are more likely to oppose the proffered solutions. The intent with this legislation is to create a bipartisan commission that includes business, union and pension rights groups. Such a panel would be able to address both the funding issues presented here, including the ''private yield curve'' approach, and evaluate other ideas for revitalizing the defined benefit system.

I urge my colleagues to support this amendment.

By Mr. MCCAIN.

S. 1551. A bill to provide educational opportunities for disadvantaged children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. MCCAIN. Mr. President, today, I am pleased to reintroduce legislation to authorize a three-year nationwide school choice demonstration program targeted at children from economically disadvantaged families. The Excellence Through Choice to Elevate Learning Act, or the EXCEL Act, will expand educational opportunities for low-income children by providing parents and students the freedom to choose the best school for their unique academic needs while encouraging schools to be creative and responsive to the needs of all students.

This bill authorizes $1.8 billion annually for fiscal years 2004 through 2007 to be used to provide school choice vouchers to economically disadvantaged children throughout the nation. The funds allocated by the bill will be divided among states based upon the number of children they have enrolled in public schools. States will then conduct a lottery among low-income children who attend the public schools with the lowest academic performance in their State. Each child selected in the lottery would receive $2,000 per year for three years to be used to pay tuition at any school of their choice in the State, including private or religious schools. The money could also be used to pay for transportation to the school or supplementary educational services to meet the unique needs of the individual student.

In total, this bill authorizes $5.4 billion for the three-year school choice demonstration program, as well as an evaluation of the program by the General Accounting Office. The cost of this important test of school vouchers is fully offset by eliminating more than $5.4 billion in unnecessary pork and inequitable corporate tax loopholes.

We all know that one of the most important issues facing our nation is the education of our children. We must strive to develop and implement initiatives which strengthen and improve our education system thereby ensuring that our children are provided with the essential academic tools for succeeding professionally, economically and personally. I am sure we all agree that increasing the academic performance and skills of all our nation's students must be the paramount goal of any education reform we implement.

School vouchers are a viable method of allowing all American children access to high quality schools, including private and religious schools. Every parent, not just the wealthy, should be able to obtain the highest quality education for their children. Tuition vouchers would provide low-income children trapped in poor or mediocre

schools the same educational choices as children of economic privilege.

Some of my colleagues may argue that vouchers would divert money away from our Nation's public schools. They will claim it is better to pour more and more money into poor performing public schools, rather than promote competition in our school systems. I respectfully disagree. While I support strengthening financial support for education in our nation, the solution to what ails our system is not money alone.

Currently our nation spends significantly more money on education than most countries and yet our students consistently score lower than their peers. Students in countries which are struggling economically, socially and politically, such as Russia, outscore U.S. children in critical subjects such as math and physics. Clearly, we must make significant change beyond blindly throwing money into the current structure in order to improve our children's academic performance in order to maintain a viable force in the world economy.

It is shameful that we are failing to provide many of our children with adequate training and quality academic preparation for the real world. The number of college freshmen who require remedial courses in reading, writing and mathematics when they begin their higher education is unacceptably high. It does not bode well for our future economy if the majority of workers are not prepared with the basic skills to engage in a competitive global marketplace.

I concede that school vouchers are not the magic bullet for eradicating all that is wrong with our current educational system, but they are an important opportunity for providing improved academic opportunities for all children, not just the wealthy. Examination of the limited voucher programs scattered around our country reveal high levels of parent and student satisfaction, an increase in parental involvement, and a definite improvement in attendance and discipline at the participating schools. Vouchers encourage public schools, communities and parents to work together to raise the level of education for all students. Through this bill, we have the opportunity to replicate these important benefits throughout all our nation's communities.

Thomas Jefferson said, ''The purpose of education is to create young citizens with knowing heads and loving hearts.'' If we fail to give our children the education they need to nurture their heads and hearts, then we threaten their futures and the future of our nation. Each of us is responsible for ensuring that our children have both the love in their hearts and the knowledge in their heads to not only dream, but to make their dreams a reality.

The time has come for us to finally conduct a national demonstration of school choice to determine the benefits or perhaps disadvantages of providing educational choices to all students, not just those who are fortunate enough to be born into a wealthy family. I urge my colleagues to support this bill and put the needs of America's school children ahead of pork barrel projects and tax loopholes benefitting only special interests and big business.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1551

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Excellence through Choice to Elevate Learning Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to assist States to—

(A) give children from low-income families the same choices among all elementary and secondary schools and other academic programs as children from wealthier families already have;

(B) improve schools and other academic programs by giving parents in low-income families increased consumer power to choose the schools and programs that the parents determine best fit the needs of their children; and

(C) more fully engage parents in their children's schooling; and

(2) to demonstrate, through a 3-year national grant program, the effects of a voucher program that gives parents in low-income families—

(A) choice among public, private, and religious schools for their children; and

(B) access to the same academic options as parents in wealthy families have for their children.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act (other than section 11) $1,800,000,000 for each of fiscal years 2004 through 2007.

(b) EVALUATION.—There is authorized to be appropriated to carry out section 11 $17,000,000 for fiscal years 2005 through 2008.

SEC. 4. PROGRAM AUTHORITY.

(a) IN GENERAL.—The Secretary shall make grants to States, from allotments made under section 5 to enable the States to carry out educational choice programs that provide scholarships, in accordance with this Act.

(b) LIMIT ON FEDERAL ADMINISTRATIVE EXPENDITURES.—The Secretary may reserve not more than $1,000,000 of the amounts appropriated under section 3(a) for a fiscal year to pay for the costs of administering this Act.

SEC. 5. ALLOTMENTS TO STATES.

(a) ALLOTMENTS.—The Secretary shall make the allotments to States in accordance with a formula specified in regulations issued in accordance with subsection (b). The formula shall provide that the Secretary shall allot to each State an amount that bears the same relationship to the amounts appropriated under section 3(a) for a fiscal year (other than funds reserved under section 4(b)) as the number of covered children in the State bears to the number of covered children in all such States.

(b) FORMULA.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue regulations specifying the formula referred to in subsection (a).

(c) LIMIT ON STATE ADMINISTRATIVE EXPENDITURES.—The State may reserve not more than 1 percent of the funds made available through the State allotment to pay for the costs of administering this Act.

(d) DEFINITION.—In this section, the term ''covered child'' means a child who is enrolled in a public school (including a charter school) that is an elementary school or secondary school.

SEC. 6. ELIGIBLE SCHOOLS.

(a) ELIGIBILITY.—

(1) IN GENERAL.—Schools identified by a State under paragraph (2) shall be considered to be eligible schools under this Act.

(2) DETERMINATION.—Not later than 180 days after the date the Secretary issues regulations under section 5(b), each State shall identify the public elementary schools and secondary schools in the State that are at or below the 25th percentile for academic performance of schools in the State.

(b) PERFORMANCE.—The State shall determine the academic performance of a school under this section based on such criteria as the State may consider to be appropriate.

SEC. 7. SCHOLARSHIPS.

(a) IN GENERAL.—

(1) SCHOLARSHIP AWARDS.—With funds awarded under this Act, each State awarded a grant under this Act shall provide scholarships to the parents of eligible children, in accordance with subsections (b) and (c). The State shall ensure that the scholarships may be redeemed for elementary or secondary education for the children at any of a broad variety of public and private schools, including religious schools, in the State.

(2) SCHOLARSHIP AMOUNT.—The amount of each scholarship shall be $2000 per year.

(3) TAX EXEMPTION.—Scholarships awarded under this Act shall not be considered income of the parents for Federal income tax purposes or for determining eligibility for any other Federal program.

(b) ELIGIBLE CHILDREN.—To be eligible to receive a scholarship under this Act, a child shall be—

(1) a child who is enrolled in a public elementary school or secondary school that is an eligible school; and

(2) a member of a family with a family income that is not more than 200 percent of the poverty line.

(c) AWARD RULES.—

(1) PRIORITY.—In providing scholarships under this Act, the State shall provide scholarships for eligible children through a lottery system administered for all eligible schools in the State by the State educational agency.

(2) CONTINUING ELIGIBILITY.—Each State receiving a grant under this Act to carry out an educational choice program shall provide a scholarship in each year of the program to each child who received a scholarship during the previous year of the program, unless—

(A) the child no longer resides in the area served by an eligible school;

(B) the child no longer attends school;

(C) the child's family income exceeds, by 20 percent or more, 200 percent of the poverty line; or

(D) the child is expelled or convicted of a felony, including felonious drug possession, possession of a weapon on school grounds, or a violent act against an other student or a member of the school's faculty.

SEC. 8. USES OF FUNDS.

Any scholarship awarded under this Act for a year shall be used—

(1) first, for—

(A) the payment of tuition and fees at the school selected by the parents of the child for whom the scholarship was provided; and

(B) the reasonable costs of the child's transportation to the school, if the school is

not the school to which the child would be assigned in the absence of a program under this Act;

(2) second, if the parents so choose, to obtain supplementary academic services for the child, at a cost of not more than $500, from any provider chosen by the parents, that the State determines is capable of providing such services and has an appropriate refund policy; and

(3) finally, for educational programs that help the eligible child achieve high levels of academic excellence in the school attended by the eligible child, if the eligible child chooses to attend a public school.

SEC. 9. STATE REQUIREMENT.

A State that receives a grant under this Act shall allow lawfully operating public and private elementary schools and secondary schools, including religious schools, if any, serving the area involved to participate in the program.

SEC. 10. EFFECT OF PROGRAMS.

(a) TITLE I.—Notwithstanding any other provision of law, if a local educational agency in the State would, in the absence of an educational choice program that is funded under this Act, provide services to a participating eligible child under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), the State shall ensure the provision of such services to such child.

(b) INDIVIDUALS WITH DISABILITIES.—Nothing in this Act shall be construed to affect the requirements of part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.).

(c) AID.—

(1) IN GENERAL.—Scholarships under this Act shall be considered to aid families, not institutions. For purposes of determining Federal assistance under Federal law, a parent's expenditure of scholarship funds under this Act at a school or for supplementary academic services shall not constitute Federal financial aid or assistance to that school or to the provider of supplementary academic services.

(2) SUPPLEMENTARY ACADEMIC SERVICES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), a school or provider of supplementary academic services that receives scholarship funds under this Act shall, as a condition of participation under this Act, comply with the provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(B) REGULATIONS.—The Secretary shall promulgate regulations to implement the provisions of subparagraph (A), taking into account the purposes of this Act and the nature, variety, and missions of schools and providers that may participate in providing services to children under this Act.

(d) OTHER FEDERAL FUNDS.—No Federal, State, or local agency may, in any year, take into account Federal funds provided to a State or to the parents of any child under this Act in determining whether to provide any other funds from Federal, State, or local resources, or in determining the amount of such assistance, to such State or to a school attended by such child.

(e) NO DISCRETION.—Nothing in this Act shall be construed to authorize the Secretary to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school participating in a program under this Act.

SEC. 11. EVALUATION.

The Comptroller General of the United States shall conduct an evaluation of the program authorized by this Act. Such evaluation shall, at a minimum—

(1) assess the implementation of educational choice programs assisted under this Act and their effect on participants, schools, and communities in the school districts served, including parental involvement in, and satisfaction with, the program and their children's education;

(2) compare the educational achievement of participating eligible children with the educational achievement of similar non-participating children before, during, and after the program; and

(3) compare—

(A) the educational achievement of eligible children who use scholarships to attend schools other than the schools the children would attend in the absence of the program; with

(B) the educational achievement of children who attend the schools the children would attend in the absence of the program.

SEC. 12. ENFORCEMENT.

(a) REGULATIONS.—The Secretary shall promulgate regulations to enforce the provisions of this Act.

(b) PRIVATE CAUSE.—No provision or requirement of this Act shall be enforced through a private cause of action.

SEC. 13. FUNDING.

The Committee on Finance and the Committee on Appropriations of the Senate and the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives shall identify wasteful spending (including loopholes to revenue raising tax provisions) by the Federal Government as a means of providing funding for this Act. Not later than 60 days after the date of enactment of this Act, the committees referred to in the preceding sentence shall jointly prepare and submit to the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives, a report concerning the spending (and loopholes) identified under such sentence.

SEC. 14. DEFINITIONS.

In this Act:

(1) CHARTER SCHOOL.—The term ''charter school'' has the meaning given the term in section 5210 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7221i).

(2) ELEMENTARY SCHOOL; LOCAL EDUCATIONAL AGENCY; PARENT; SECONDARY SCHOOL; STATE EDUCATIONAL AGENCY.—The terms ''elementary school'', ''local educational agency'', ''parent'', ''secondary school'', and ''State educational agency'' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) POVERTY LINE.—The term ''poverty line'' means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(5) STATE.—The term ''State'' means each of the 50 States.

By Mr. CRAIG:

S. 1553. A bill to amend title 18, United States Code, to combat, deter, and punish individuals and enterprises engaged in organized retail theft; to the Committee on the Judiciary.

Mr. CRAIG. Mr. President, today I am introducing legislation to respond to a growing crime problem that is harming honest businesses, endangering public health, and dragging down our economy.

The problem I am talking about is organized retail theft.

Organized retail theft is a quantum leap in criminality beyond petty shoplifting. It involves professional gangs or theft rings that move quickly from store to store, from community to community, and across State lines to pilfer large amounts of merchandise that can be easily sold through fencing operations, flea markets, swap meets and shady storefront operations.

This type of criminal activity is a growing problem throughout the United States, harming many segments of the retail community, including supermarkets, chain drug stores, independent pharmacies, convenience stores, large discount operations, mass merchandisers, and specialty shops, among others. Organized retail theft has become the most pressing security problem confronting retailers and their suppliers, accounting for an estimated $30 billion in losses at the retail level annually, according to the Federal Bureau of Investigation's interstate theft task force.

This kind of theft also presents significant health and safety risks for consumers. While items that are in high demand and prized by these organized gangs include software, videos, DVDs and CDs, razor blades, camera film, and batteries—they also include over-the-counter drug products, such as analgesics, cough and cold medications, and infant formula. Professional theft rings do not provide ideal or required storage conditions for consumable items, and as a result, the integrity and nutrient content of these products is often compromised. Furthermore, when products are near the end of their expiration date, it is not uncommon for unscrupulous middlemen to change the expiration date, lot numbers, and labels to falsely extend the shelf-life of the products or to disguise the fact that the merchandise has been stolen.

Clearly, theft of this kind adversely affects both retailers and consumers in a variety of ways. For example, because theft by professional gangs has become so rampant in certain product categories, such as infant formula, many retail stores are taking the product off the shelves and placing them behind the counter or under lock and key. In some cases, products are simply unavailable due to high pilferage rates.

Let me commend the Federal Bureau of Investigation and the Department of Justice for their work in this area. I know the Department has successfully prosecuted a number of cases against professional shoplifting rings. However, retail organizations and individual companies are crying out for help because this type of criminal activity is escalating, and there is no federal statute that specifically addresses organized retail theft. I believe more can be done to help in the investigation, apprehension, and prosecution of these criminal gangs.

The legislation that I am introducing is in response to the concerns that

have been brought to my attention by the retailing community. I hope my colleagues will join me in this effort. While this bill is not a cure-all, I hope it will help to highlight the magnitude of the problem so that we can begin considering appropriate initiatives with all interested parties, including our federal law enforcement agencies, on how to effectively combat and deter organized retail theft in the future.

I ask unanimous consent that the text of the Organized Retail Theft Act be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1553

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Organized Retail Theft Act of 2003''.

SEC. 2. PROHIBITION AGAINST ORGANIZED RETAIL THEFT.

(a) IN GENERAL.—Chapter 103 of title 18, United States Code, is amended by adding at the end the following:

''§ 2120. Organized retail theft

''(a) IN GENERAL.—Whoever in any material way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by taking possession of, carrying away, or transferring or causing to be carried away, with intent to steal, any goods offered for retail sale with a total value exceeding $1,000, but not exceeding $5,000, during any 180-day period shall be fined not more than $1,000, imprisoned not more than 1 year, or both.

''(b) HIGH VALUE.—Whoever in any material way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by taking possession of, carrying away, or transferring or causing to be carried away, with intent to steal, any goods offered for retail sale with a total value exceeding $5,000, during any 180-day period, shall be fined under this title, imprisoned not more than 10 years, or both.

''(c) RECEIPT AND DISPOSAL.—Whoever receives, possesses, conceals, stores, barters, sells, disposes of, or travels in interstate or foreign commerce, with the intent to distribute, any property which the person knows, or should know has been taken or stolen in violation of subsection (a) or (b), or who travels in interstate or foreign commerce, with the intent to distribute the proceeds of goods which the person knows or should know to be the proceeds of an offense described in subsection (a) or (b), or to otherwise knowingly promote, manage, carry on, or facilitate an offense described in subsection (a) or (b), shall be fined or imprisoned as provided in subsection (a) if the actions involved a violation of subsection (a) and as provided in subsection (b) if the actions involved a violation of subsection (b).

''(d) ENHANCED PENALTIES.—

''(1) ASSAULT.—Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title, imprisoned not more than 25 years, or both.

''(2) DEATH AND KIDNAPPING.—Whoever, in committing any offense under this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than 10 years, or if death results shall be punished by death or life imprisonment.

''(e) FORFEITURE AND DISPOSITION OF GOODS.—

''(1) IN GENERAL.—Whoever violates this section shall forfeit to the United States, irrespective of any provision of State law any interest in the retail goods the person knows or should know to have been acquired or maintained in violation of this section.

''(2) INJUNCTIONS AND IMPOUNDING, FORFEITURE, AND DISPOSITION OF GOODS.—

''(A) INJUNCTIONS AND IMPOUNDING.—In any prosecution under this subsection, upon motion of the United States, the court may—

''(i) grant 1 or more temporary, preliminary, or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain the alleged violation; and

''(ii) at any time during the proceedings, order the impounding on such terms as the court determines to be reasonable, of any good that the court has reasonable cause to believe was involved in the violation.

''(B) FORFEITURE AND DISPOSITION OF GOODS.—Upon conviction of any person of a violation under this subsection, the court shall—

''(i) order the forfeiture of any good involved in the violation or that has been impounded under subparagraph (A)(ii);

''(ii) either—

''(I) order the disposal of the good by delivery to such Federal, State, or local government agencies as, in the opinion of the court, have a need for such good, or by gift to such charitable or nonprofit institutions as, in the opinion of the court, have a need for such good, if such disposition would not otherwise be in violation of law and if the manufacturer consents to such disposition; or

''(II) order the return of any goods seized or impounded under subparagraph (A)(ii) to their rightful owner; and

''(iii) find that the owner of the goods seized or impounded under subparagraph (A)(ii) aided in the investigation and order that such owner be reimbursed for the expenses associated with that aid.

''(C) TERMS.—For purposes of remission and mitigation of goods forfeited to the Government under this subsection, the provisions of section 981(d) of this title shall apply.

''(f) CIVIL REMEDIES.—

''(1) IN GENERAL.—Any person injured by a violation of this section, or who demonstrates the likelihood of such injury, may bring a civil action in an appropriate United States district court against the alleged violator. The complaint shall set forth in detail the manner and form of the alleged violation.

''(2) INJUNCTIONS AND IMPOUNDING AND DISPOSITION OF GOODS.—In any action under paragraph (1), the court may—

''(A) grant 1 or more temporary, preliminary, or permanent injunctions upon the posting of a bond at least equal to the value of the goods affected and on such terms as the court determines to be reasonable to prevent or restrain the violation;

''(B) at any time while the action is pending, order the impounding upon the posting of a bond at least equal to the value of the goods affected and, on such terms as the court determines to be reasonable, if the court has reasonable cause to believe the goods were involved in the violation; and

''(C) as part of a final judgment or decree, in the court's discretion, order the restitution of any good involved in the violation or that has been impounded under subparagraph (B).

''(3) DAMAGES.—In any action under paragraph (1), the plaintiff shall be entitled to recover the actual damages suffered by the plaintiff as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages. In establishing the violator's profits, the plaintiff shall be required to present proof only of the violator's sales, and the violator shall be required to prove all elements of cost or deduction claimed.

''(4) COSTS AND ATTORNEY'S FEES.—In any action under paragraph (1), in addition to any damages recovered under paragraph (3), the court in its discretion may award the prevailing party its costs in the action and its reasonable attorney's fees.

''(5) REPEAT VIOLATIONS.—

''(A) TREBLE DAMAGES.—In any case in which a person violates this section within 3 years after the date on which a final judgment was entered against that person for a previous violation of this section, the court may, in its discretion, in an action brought under this subsection, increase the award of damages for the later violation to not more than 3 times the amount that would otherwise be awarded under paragraph (3), as the court considers appropriate.

''(B) BURDEN OF PROOF.—A plaintiff that seeks damages described in subparagraph (A) shall bear the burden of proving the existence of the earlier violation.

''(h) DEFINITION.—In this section, the term 'value' has the meaning given that term in section 2311 of this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 103 of title 18, United States Code, is amended by inserting at the end the following:

''2120. Organized retail theft.''.

SEC. 3. COMMISSION OF ORGANIZED RETAIL THEFT A PREDICATE FOR RICO CLAIM.

Section 1961(1) of title 18, United States Code, is amended by adding '', section 2120 (relating to organized retail theft)'' before '', sections 2251''.

SEC. 4. FLEA MARKETS.

(a) PROHIBITIONS.—No person at a flea market shall sell, offer for sale, or knowingly permit the sale of any of the following products:

(1) Baby food, infant formula, or similar products used as a sole or major source of nutrition, manufactured and packaged for sale for consumption primarily by children under 3 years of age.

(2) Any drug, food for special dietary use, cosmetic, or device, as such terms are defined in the Federal Food, Drug, and Cosmetic Act and regulations issued under that Act.

(b) EXCLUSION.—Nothing in this section shall prohibit a person from engaging in activity otherwise prohibited by subsection (a), in the case of a product described in subsection (a)(2), if that person maintains for public inspection written documentation identifying the person as an authorized representative of the manufacturer or distributor of that product.

(c) FLEA MARKET DEFINED.—

(1) IN GENERAL.—As used in this section, the term ''flea market'' means any physical location, other than a permanent retail store, at which space is rented or otherwise made available to others for the conduct of business as transient or limited vendors.

(2) EXCLUSION.—For purposes of paragraph (1), transient or limited vendors shall not include those persons who sell by sample or catalog for future delivery to the purchaser.

(d) CRIMINAL PENALTIES.—Any person who willfully violates this section shall be punished as provided in section 2120 of title 18, United States Code.

SEC. 5. ATTORNEY GENERAL REPORTING REQUIREMENTS.

Beginning with the first year after the date of enactment of this Act, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, United States Code, an accounting, on a district by district basis, of the following with respect to all actions taken by the Department of Justice that involve organized retail theft (as punishable under section 2120 of title 18, United States Code, as added by this Act), including—

(1) the number of open investigations;

(2) the number of cases referred by the United States Customs Service;

(3) the number of cases referred by other agencies or sources; and

(4) the number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under section 2120 of title 18, United States Code.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 208—EXPRESSING THE SENSE OF THE SENATE IN SUPPORT OF IMPROVING AMERICAN DEFENSES AGAINST THE SPREAD OF INFECTIOUS DISEASES

Mr. AKAKA submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 208

Whereas the Central Intelligence Agency's January 2000 National Intelligence Estimate (NIE), The Global Infectious Disease Threat and Its Implications for the United States, found that infectious diseases are a leading cause of death worldwide and that ''New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years'';

Whereas the World Health Organization estimates that infectious diseases accounted for more than 11,000,000 deaths in 2001;

Whereas the NIE observed the number of infectious diseases related deaths within the United States had increased, having doubled to 170,000 since 1980;

Whereas the General Accounting Office noted in its August 2001 report, Global Health: Challenges in Improving Infectious Disease Surveillance Systems, that most of the infectious disease deaths occur in the developing world, but that infectious diseases pose a threat to people in all parts of the world because diseases know no boundaries;

Whereas the NIE remarked that the increase in international air travel and trade will ''dramatically increase the prospects,'' that infectious diseases will ''spread quickly around the globe, often in less time than the incubation period of most diseases'';

Whereas, the NIE commented that many infectious diseases, like the West Nile virus, come from outside U.S. borders and are introduced by international travelers, immigrants, returning U.S. military personnel, or imported animals or foodstuffs;

Whereas diseases coming from overseas such as Acquired Immune Deficiency Syndrome (AIDS), Severe Acute Respiratory Syndrome (SARS), and West Nile virus have had or could have a serious impact on the health and welfare of the U.S. population;

Whereas the NIE found that war, natural disasters, economic collapse, and human complacency around the world are causing a breakdown in health care delivery and helping the emergence or reemergence of infectious diseases;

Whereas, the danger of an outbreak of a deadly disease overseas affecting the United States is increasing;

Whereas the rapid and easy transport of diseases to the United States underscores that Americans are now part of a global public health system;

Whereas the General Accounting Office emphasized that ''disease surveillance provides national and international public health authorities with information they need to plan and manage to control these diseases'';

Whereas the early warning of a disease outbreak is key to its identification, the quick application of countermeasures and the development of cures;

Whereas the United States should strengthen its ability to detect foreign diseases before such diseases reach U.S. borders;

Whereas the G–8 group of industrialized countries at the 2003 Evian summit made a commitment to fight against AIDS, tuberculosis, and malaria; encouraged research into diseases affecting mostly developing countries; committed to working closely with the World Health Organization; and recognized that the spread of SARS ''demonstrates the importance of global collaboration, including global disease surveillance, laboratory, diagnostic and research efforts, and prevention, care, and treatment'';

Whereas the Centers for Disease Control and Prevention (CDC) plays an important role in foreign disease surveillance, and a key CDC program to strengthen global disease surveillance is its training of foreign specialists in modern epidemiology through its Field Epidemiology Training Programs (FETPs);

Whereas the CDC's FETPs have existed for almost 20 years working with ministries of health around the world and the World Health Organization, and that currently FETPs are in 30 countries throughout the world to support disease detection and provide an essential link in global surveillance; and

Whereas the work of the FETPs is critical to establishing a first line of defense overseas to protect the health of American citizens: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Centers for Disease Control and Prevention's Field Epidemiology Training Programs and related epidemic services and global surveillance programs should receive full support;

(2) the President should require an annual National Intelligence Estimate on the global infectious disease threat and its implications for the United States;

(3) the President should propose to the G–8 that the G–8 develop and implement a program to train foreign epidemiological specialists in the developing world; and

(4) the international community should increase funding for the World Health Organization's global disease surveillance capability.

Mr. AKAKA. Mr. President, I rise to submit a sense of the Senate resolution that the Senate supports improving American defenses against the spread of infectious diseases from abroad. The United States and other nations have a serious global problem in confronting the natural outbreak or deliberate spread of infectious diseases. The Central Intelligence Agency's January 2000 National Intelligence Estimate, NIE, The Global Infectious Disease Threat and Its Implications for the United States found that infectious diseases are a leading cause of death worldwide and that ''New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years.''

I have been concerned about the bioterrorist threat to this country for some time. In 2001, as chairman of the Senate Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services, I chaired hearings that addressed the Nation's preparedness to respond to a bioterrorist attack. Sadly, the SARS outbreak demonstrated that naturally occurring diseases can be spread extraordinarily quickly through international air travel. This raises questions over our Nation's ability to counter a bioterrorist attack and protect our public health in general. Preparations that organize our health care network against a naturally occurring disease outbreak can also help guard Americans against a bioterrorist attack. Our first line of defense must be pushed beyond the borders of the United States to countries overseas. We should help stop the spread of a disease at its source before tens or hundreds of air-travelers inadvertently spread it around the globe.

The World Health Organization, WHO, World Health Report 2002 estimates that infectious diseases accounted for more than 11 million deaths in 2001. Most of these infectious disease deaths occurred in the developing world, where they imposed a terrible burden on societies whose public health systems were already stretched beyond their limits. Infectious diseases, however, pose a threat to people in all parts of the world. Diseases easily spread beyond national borders.

The NIE noted that many infectious diseases come from outside U.S. borders and are introduced by international travelers, immigrants, returning U.S. military personnel, or imported animals or foodstuffs. The report states the increase in international air travel and trade will ''dramatically increase the prospects,'' that infectious diseases will ''spread quickly around the globe, often in less time than the incubation period of most diseases.''

Diseases that originated overseas, such as HIV/AIDS, have had a serious impact on the health and welfare of U.S. population. For example, according to the Centers for Disease Control and Prevention, CDC, since the beginning of the HIV/AIDS epidemic, there have been almost 450,000 deaths. There are an estimated 800,000 to 900,000 people currently living with human immunodeficiency virus in the United States with approximately 40,000 new human immunodeficiency virus infections occurring in the U.S. every year.

SARS and the West Nile virus have also had an impact in the United States.

The danger of an outbreak of a deadly disease overseas affecting the United States is increasing. The NIE found that war, natural disasters, economic collapse, and human complacency around the world are causing a breakdown in health care delivery and helping the emergence or reemergence of infectious diseases.

To be forewarned is to be forearmed. The early warning of a disease outbreak is key to its identification; the quick application of countermeasures; and the development of cures. The General Accounting Office, GAO, noted in its August 2001 report, Global Health: Challenges in Improving Infectious Disease Surveillance Systems, that ''disease surveillance provides national and international public health authorities with information they need to plan and manage to control these diseases.''

The next disease to strike the United States, like SARS, may be an unrecognized pathogen. As of July 2003, the SARS virus has sickened more than 8,000 people, including over 35 in the United States. The disease has killed more than 800 since the outbreak began in southern China, and has had severe economic repercussions in the countries beset by the outbreak. Although the disease appears to be under control for the moment, many fear there will be resurgence of SARS in the fall when the general flu and cold season begins. We have to do a better job next time, and by helping others we will help ourselves to do so. We need to strengthen our ability to detect foreign diseases before they cross our borders. The CDC has played a significant role in foreign disease surveillance for many years. Its Field Epidemiology Training Programs is an important program that strengthens global disease surveillance by training foreign specialists in modern epidemiology. FETPs have existed for almost 20 years and involve working with ministries of health around the world and the World Health Organization. Currently FETPs are in 30 countries throughout the world, supporting disease detection efforts and providing an essential link in global surveillance. The work of the FETPs is critical to establishing a first line of defense overseas to protect the health of local populations and of American citizens from the spread of deadly infectious diseases. This work is more timely and necessary than ever. As Dr. James Hughes, Director of the National Center for Infectious Diseases at the CDC told the Governmental Affairs Committee's Permanent Subcommittee on Investigations on July 30th, the lessons learned from the SARS outbreak show, ''The SARS experience reinforces the importance of global surveillance,'' as well as having prompt reporting and a strong laboratory capability.

We need to ensure that the CDC work in this area, which is at times heroic, is given the funding it requires. We also need to keep this question prominently on our national agenda. We need attention focused on infectious diseases on an annual basis. We need to understand better the political and economic implications of the spread of infectious diseases for foreign countries and the United States, and we need to know what are likely future trends depending on the level of intervention to address this problem. I suggest that a NIE on infectious diseases should be produced each year so that we have a comprehensive analysis of worldwide infectious disease and health developments.

The G–8 group of leading industrialized nations is playing a role on global health issues. At the 2003 Evian summit, the G–8 made a commitment to fight against the so-called big three diseases of AIDS, tuberculosis, and malaria. But the G–8 recognized the spread of SARS demonstrated ''the importance of global collaboration, including global disease surveillance.'' These words need to be backed by vigorous, coordinated actions. I urge the President to work with the G–8 to create regional FETP programs so that every part of the world can be covered by a strong public health disease surveillance system.

Moreover, we should support the World Health Organization, whose work provides a critical underpinning to the efforts of the global public health community. The World Health Organization's regular budget has been more or less flat since the mid-1990s in nominal terms, around $420 million a year. In real terms, some estimate this means it has been reduced by 25 percent or more. WHO receives additional extra budgetary funding of several hundred million dollars a year. But most of this is project specific and does not directly support the basic public health activities of WHO and is not a substitute for funding core WHO activities. WHO global surveillance activities have been built with very modest extra budgetary contributions on top of a modest amount of core resources. But WHO's global disease surveillance work is underfunded and is being conducted in an overall context of declining real WHO core funding.

The rapid and easy transport of diseases to and throughout the United States underscores that Americans are now part of a global public health system. I have been impressed by the commendable effort that the Bill and Melinda Gates Foundation has made to improve health in the developing world. The foundation has spent over $3 billion for this goal. Such visionary leadership should not only exist in the world of philanthropy. This country should take a stronger lead in improving public health and disease surveillance systems overseas.

SENATE RESOLUTION 209—RECOGNIZING AND HONORING WOODSTOCK, VERMONT, NATIVE HIRAM POWERS FOR HIS EXTRAORDINARY AND ENDURING CONTRIBUTIONS TO AMERICAN SCULPTURE

Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. WARNER, Ms. STABENOW, and Mr. DODD) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 209

Whereas Hiram Powers is one of the preeminent artists in American sculpture;

Whereas Hiram Powers, in the words of the director and curator of the Houston Museum of Fine Arts, was the artist who ''put American sculpture on the map,'' gaining international fame and providing unprecedented support for the notion of the United States as a country capable of producing artists equal to or better than their international counterparts;

Whereas Powers' 1844 sculpture ''Greek Slave'' became, in the words of Powers biographer Richard Wunder, ''a telling symbol'' of freedom for Americans in the pre-Civil War years and remains unequaled in popularity among American sculptures;

Whereas Powers' bust of President Andrew Jackson is widely considered the finest portrait ever sculpted of the president, as well as one of the noblest examples of portraiture ever created by an American sculptor;

Whereas the Congress of the United States, in recognition of Powers' extraordinary talents, awarded him commissions to execute the statues of John Marshall, Benjamin Franklin, and Thomas Jefferson that stand today in the United States Capitol;

Whereas Powers preserved through his sculpture the memory of numerous other great Americans, including George Washington, John Quincy Adams, Daniel Webster, John C. Calhoun, Martin Van Buren, and Henry Wadsworth Longfellow;

Whereas Powers was born in 1805 in Woodstock, Vermont, and happily spent his early years in that town;

Whereas throughout his life, Powers held sacred the memories of his childhood in Woodstock and drew upon these memories as inspiration for his work, saying, ''dreams often take me back to Woodstock and set me down upon the green hills''; and

Whereas the citizens of Woodstock, Vermont, are preparing to celebrate the bicentennial of Hiram Powers' birth with exhibits, symposiums, and other commemorative activities: Now, therefore, be it

Resolved, That the Senate recognizes and honors Woodstock, Vermont, native Hiram Powers for his extraordinary and enduring contributions to American sculpture.

Mr. JEFFORDS. Mr. President, I rise to submit a resolution honoring Hiram Powers, a 19th Century American sculptor. He was born in Woodstock, VT in 1805 and chose a career in sculpting that bolstered the image of the United States in the world of art.

I invite all of my colleagues to join me in this effort by cosponsoring this resolution.

I realize many people have never head of Hiram Powers, but we have all seen his work. Just outside the Senate Chamber's doors, stands an 8-foot-tall marble statute of Benjamin Franklin. Hiram Powers made the statue in 1862.

On the House side, stands a similar statue of Thomas Jefferson. Hiram

Powers also made that statue. In the Old Supreme Court Chamber, sits the bust of one of the Supreme Court's greatest Chief Justices, John Marshall, yes, Hiram Powers made that one too.

In fact, in 1836, when Congress passed a resolution calling for the creation of a marble bust for John Marshall, Congress wanted it to be prepared by ''an artist of merit and reputation.'' Congress decided that Hiram Powers was that artist.

His work is not limited to the U.S. Capitol. He also created a bust of Andrew Jackson for the White House. This work is widely considered one of the noblest examples of portraiture ever created by an American sculptor.

Perhaps his most well known work is not of a famous historical figure, but a symbol representing the most tragic episode in our country's history.

In the years prior to the Civil War, Hiram Powers was an outspoken abolitionist, and in 1844 he created his first rendition of the ''Greek Slave,'' a neoclassical statue of a young woman wearing contemporary American manacles. This work can be seen in the Corcoran Gallery of Art.

Congress paid Hiram Powers a commission for the works he created over 160 years ago. I believe it is now time for Congress to thank Hiram Powers, an artist of merit and reputation, for his work that continues to inspire us to this day, and for generations to come.

Mr. President, I encourage all of my colleagues to join me in cosponsoring this resolution that I send to the desk.

SENATE RESOLUTION 210—EXPRESSING THE SENSE OF THE SENATE THAT SUPPORTING A BALANCE BETWEEN WORK AND PERSONAL LIFE IS IN THE BEST INTEREST OF NATIONAL WORKER PRODUCTIVITY, AND THAT THE PRESIDENT SHOULD ISSUE A PROCLAMATION DESIGNATING OCTOBER AS ''NATIONAL WORK AND FAMILY MONTH''

Mr. HATCH (for himself, Mr. KENNEDY, Mr. DODD, and Mr. ALEXANDER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 210

Whereas the quality of workers' jobs and the supportiveness of their workplaces are key predictors of job productivity, job satisfaction, commitment to employers, and retention;

Whereas there is a clear link between work-family policies and lower absenteeism;

Whereas the more overworked employees feel, the more likely they are to report making mistakes, feel anger and resentment toward employers and coworkers, and look for a new job;

Whereas employees who feel overworked tend to feel less successful in their relationships with their spouses, children, and friends, and tend to neglect themselves, feel less healthy, and feel more stress;

Whereas 85 percent of U.S. wage and salaried workers have immediate, day-to-day family responsibilities off the job;

Whereas 46 percent of wage and salaried workers are parents with children under the age of 18 who live with them at least half-time;

Whereas job flexibility allows parents to be more involved in their children's lives, and parental involvement is associated with children's higher achievement in language and mathematics, improved behavior, greater academic persistence, and lower dropout rates;

Whereas a lack of job flexibility for working parents negatively affects children's health in ways that range from children being unable to make needed doctors' appointments, to children receiving inadequate early care, leading to more severe and prolonged illness;

Whereas nearly one out of every four Americans—over 45 million Americans—provided or arranged care for a family member or friend in the past year;

Whereas nearly all working adults are concerned about spending more time with their immediate family; and

Whereas as an increasing number of baby boomers reach retirement age in record numbers, more and more Americans are faced with the challenge of caring for older parents: Now, therefore, be it

Resolved, That—

(1) it is the sense of the Senate that—

(A) reducing the conflict between work and family life should be a national priority; and

(B) the month of October should be designated as ''National Work and Family Month''; and

(2) the Senate requests that the President issue a proclamation calling upon the people of the United States to observe ''National Work and Family Month'' with appropriate ceremonies and activities.

Mr. HATCH. Mr. President, I rise today in support of S. Res. 210, which would proclaim the month of October as ''National Work and Family Month.''

In Congress, we talk a lot about the importance of productivity in the workplace. We've all heard it many times: When workers are more productive, their wages and their living standards increase. American workers are just about the most productive in the world, and that's the reason we have the highest living standard of any large country. But this abstract idea we call productivity doesn't really capture what makes modern life so much more comfortable than life in the old days. And for most Americans, the days have gotten a lot nicer over the decades, and that includes the time that Americans spend at work.

In my lifetime, the workplace has changed so much that it is unrecognizable. Work in America is a lot less backbreaking than it used to be, it involves a lot more thinking and typing on average and a lot less lifting and hauling and welding and soldering. It involves a balance, a balance between business and personal activities, and between giving and receiving. That's a great thing. In just about every way imaginable, most Americans work in places that are far more family-friendly than in the past.

Flexible work schedules are becoming much more common, too. In 1985, just 14 percent of workers were on flexible schedules, but now 28 percent of workers are. Flexible schedules make it easier to balance work and family. And the workweek is getting shorter, too. In 1890, the average workweek was 60 hours; by 1950 it was down to 40, and now it's down to 35 hours a week for factory workers.

The major reason for these changes is the constantly innovating free-market economy. As any employer can tell you, the competition for workers is usually just as cutthroat as the competition for customers. Very few employees in the U.S. today would put up with 1950s style working conditions, let alone 1890s style work conditions. In most cases, if employers treat their workers wrong for very long, those workers will find something else to do with their time. Every day in every State across this Nation, people quit jobs they hate so they can look for something better. Stacks of business magazines extol the virtues of the worker-friendly, family friendly workplace, and study after study points out that in many cases, a family-friendly workplace more than pays for itself.

But in too many cases, our Nation's laws haven't kept up with changes in the real-world workplace. We have laws from an industrial era that have lagged far behind changes in the economy. And more importantly, our laws have lagged behind changes in people's personal lives. Yes, we've made some progress over the years, but there's still a lot to be done, such as in the areas of early childhood education and elder care, two areas that I have worked on in the past, and where I know we need to do more work in the future.

Today I'd like to focus on one area where we are on the cusp of making a lot more progress, and that is the area of flex time for America's workers. Right now, millions of employees in both the public and private sectors enjoy flexible work schedules. But our industrial-era laws completely shut millions of hourly wage-earners out of the world of flex-time. Over the last few Congresses, a number of proposals have been offered, by President Clinton, by President Bush, and by many members of Congress, to give hourly workers in the private sector the same job flexibility that government workers already enjoy.

Right now, federal law decrees that any hourly wage-earner who works more than forty hours per week must be paid overtime at time-and-one-half. But these rules, which I admit sound quite sensible at first, mean that hourly workers in the private sector can't have the ''nine-nines'' workweek that so many federal and state government employees take advantage of.

Under the nine-nines workweek, a worker works for nine hours per day for eight days, then works for eight hours on the ninth day, and then the worker can take every other Friday or every other Monday off as a holiday. This adds up to eighty hours over two weeks, but it turns every other weekend into a three-day weekend.

Millions of hourly wage-earners would love to be able to have this kind

of work schedule, but our industrial-age rules make it impossible for companies to do that without paying overtime wages. It's illegal. If we can amend Federal law to change the standard work period from forty hours every week to eighty hours every two weeks, that would be a great help to America's hourly workers. And it would make it easier for millions of workers to take more weekend trips with the kids, to make doctor's appointments without taking time off of work, and to just live a life that is a little bit less hectic. And that's what family-friendly business policies are all about.

Right now, we're seeing a fair amount of controversy over another family-friendly work proposal that goes by the name of comp-time legislation. This is another idea that has been around here for too long, and it's time for it to become law.

Comp time would allow workers who work overtime a choice: either they could receive overtime pay in the form of time-and-one-half in cash, or they could receive their pay as time-and-a-half in the form of paid time off. Ten hours of overtime this week could mean fifteen hours off next week, all of it paid time off. This would be unbelievably valuable for workers who would appreciate some extra time with their families. And despite some of the false claims made about comp time, the law would let unionized workers negotiate comp-time agreements through their unions, so it would completely respect worker's rights to organize.

As I said earlier, the flex-time and comp-time proposals would provide private sector employees the same opportunities that Federal employees currently have. These proposals would help husbands and wives balance the demands of work and family. This is the kind of legislation that Congress should be enacting to bring our laws into the 21st century. I keep hearing from working parents who struggle to balance the worlds of work and family, and I'm convinced that changing our industrial-era wages and hours laws will give them the flexibility they so desire.

I would like to say a little bit more about what Congress can do in the critical area of elder care. I come from a state with a large proportion of elderly citizens, and I know that this is an issue that weighs heavily on the minds of a lot of working families. Our society often overlooks the importance of caring for elderly parents, but I know how hard it is for a husband or a wife to concentrate on work when they have to be concerned about a frail parent. I've sponsored legislation to help our medical system help our nation's frail elderly. One of the major benefits of this kind of reform is that adult children won't have to live in fear of whether or not their parents will be cared for. The Medicare Improvements for Special Needs Beneficiaries Act, which I introduced in the 107th Congress, would be a big help to elderly Americans who have complex, long-term care needs. And it would be a great relief to their adult children.

There is a joy in giving the gift of our skills at work, at giving ourselves to the task at hand so thoroughly that we accomplish a task and can say to ourselves, ''well done.'' Fortunately, most working Americans also have the reassurance that they can draw a healthy line, a healthy boundary, between their family and their job, caring for both their loved ones and their work. The rise of flex-time in salaried jobs is a great example of this. When people are able to find a job where they can draw this line, we are happier and more content individuals. I hope that Congress can remove some of the legal barriers that stand between the American people and their ability to draw that line where they see fit.

For all of these reasons, I urge my colleagues to join with Senator KENNEDY and myself to bring attention to the need for a family-friendly work environment. I urge them to cosponsor this resolution. Our industrial-era labor laws and labor regulations are a barrier to a healthy work environment, and they need serious reform. As I said, I've been working on this along with my old friend Senator KENNEDY, and I'm also grateful to have the help of Senator DODD and Senator ALEXANDER. The four of us may not always see eye to eye on the precise way to help the private sector to build a family-friendly workplace, but I know we agree on the goal: A better life for American families.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues, Senators HATCH, ALEXANDER and DODD, in introducing this Senate resolution to declare October National Work-Family Month.

Eighty-five percent of Americans have day-to-day family responsibilities. Many care for children, a spouse or partner, or another family member. As our population ages, an increasing number must care for their own parents. Numerous studies have shown that in addition to increased personal responsibilities, these hard-working men and women are also spending more and more time on the job putting in longer and longer hours. As a result, many employees suffer from burnout, fatigue, or even serious illness.

These concerns affect us all. Parents say their biggest daily challenge is balancing their work and their family responsibilities. It is clear that sick children recover more quickly when cared for by a parent. Senior citizens are relying more and more on their working adult children to care for them when they are ill. In fact, a study by the Kaiser Foundation in 2000 found that 34 percent of women and 24 percent of men say they have missed work as a result of caring for an aging parent.

The Family and Medical Leave Act has been a significant first step in dealing with this issue but it is far from enough. The resolution to declare October National Work-Family Month will bring new attention to this important issue.

SENATE RESOLUTION 211—EXPRESSING THE SENSE OF THE SENATE REGARDING THE TEMPORARY ENTRY PROVISIONS IN THE CHILE AND SINGAPORE FREE TRADE AGREEMENTS

Mr. SESSIONS (for himself, Mr. KYL, Mrs. FEINSTEIN, Mr. CRAIG, Mr. GRAHAM of South Carolina, Mr. CHAMBLISS, Mr. FEINGOLD, Mr. BYRD, Mr. DORGAN, Mr. KOHL, Mr. DAYTON, and Ms. MIKULSKI) submitted the following resolution, which was considered and agreed to:

S. RES. 211

Whereas the transmittal of the legislation implementing the Chile and Singapore Free Trade Agreements to the Senate on July 15, 2003, was preceded by debate over whether temporary entry provisions in both the underlying language of the Chile and Singapore Free Trade Agreements and in the implementing legislation should be included;

Whereas article I, section 8, clause 3 of the Constitution authorizes Congress ''to regulate Commerce with foreign Nations, and among the several States'', and article I, section 8, clause 4 of the Constitution provides that Congress shall have power to ''establish an uniform Rule of Naturalization'';

Whereas the Supreme Court has long interpreted these provisions of the Constitution to grant Congress plenary power over immigration policy;

Whereas members of the Senate often disagree about immigration policy, but agree that the formulation of immigration policy belongs to Congress; and

Whereas the practice of negotiating temporary entry provisions in the context of bilateral or multilateral trade agreements curtails the ability of Congress to regulate the Nation's immigration policies, including the admission of foreign nationals: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) trade agreements are not the appropriate vehicle for enacting immigration-related laws or modifying current immigration policy; and

(2) future trade agreements to which the United States is a party and the legislation implementing the agreements should not contain immigration-related provisions.

SENATE RESOLUTION 212—WELCOMING HIS HOLINESS THE FOURTEENTH DALAI LAMA AND RECOGNIZING HIS COMMITMENT TO NON-VIOLENCE, HUMAN RIGHTS, FREEDOM, AND DEMOCRACY

Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, and Mr. BIDEN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 212

Whereas for over 40 years in exile, His Holiness the Fourteenth Dalai Lama has used his position and leadership to promote compassion and non-violence as a solution to not only the present crisis in Tibet, but to other long-running conflicts around the world;

Whereas the Dalai Lama was awarded the Nobel Peace Prize in 1989 in recognition of his efforts to seek a peaceful resolution to the situation in Tibet, and to promote nonviolent methods for resolving conflict;

Whereas the Dalai Lama has been strong voice for the basic human fights of all peoples, particularly freedom of region;

Whereas the Dalai Lama has personally promoted democratic self-government for Tibetans in exile as a model for securing freedom for all Tibet, including relinquishing his political positions and turning these authorities over to elected Tibetan representatives;

Whereas the Dalai Lama seeks a solution for Tibet that provides genuine autonomy for the Tibetan people and does not call for independence and separation from the People's Republic of China;

Whereas the envoys of the Dalai Lama have traveled to China and Tibet twice in the past year to begin discussions with Chinese authorities on a permanent negotiated settlement of the Tibet issue;

Whereas the successful advancement of these discussions is in the strong interest of both the Chinese and Tibetan people; and

Whereas it is the policy of the United States to support substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the visit of the Dalai Lama to the United States in September 2003 is warmly welcomed;

(2) the Dalai Lama should be recognized and congratulated for his consistent efforts to promote dialogue to peacefully resolve the Tibet issue and to increase the religious and cultural autonomy of the Tibetan people; and

(3) all parties to the current discussions should be encouraged by the Government of the United States to deepen these contacts in order to achieve the aspirations of the people of Tibet for genuine autonomy and basic human rights.

SENATE RESOLUTION 213—DESIGNATING AUGUST 2003, AS ''NATIONAL MISSING ADULT AWARENESS MONTH''

Mrs. LINCOLN (for herself, Mr. KENNEDY, and Mr. EDWARDS) submitted the following resolution; which was considered and agreed to:

S. RES. 213

Whereas our Nation must acknowledge that missing adults are a growing group of victims, who range in age from young adults to senior citizens and reach across all lifestyles;

Whereas every missing adult has the right to be searched for and to be remembered, regardless of the adult's age;

Whereas our world does not suddenly become a safe haven when an individual becomes an adult;

Whereas there are tens of thousands of endangered or involuntarily missing adults over the age of 17 in our Nation, and daily, more victims are reported missing;

Whereas the majority of missing adults are unrecognized and unrepresented;

Whereas our Nation must become aware that there are endangered and involuntarily missing adults, and each one of these individuals is worthy of recognition and deserving of a diligent search and thorough investigation;

Whereas every missing adult is someone's beloved grandparent, parent, child, sibling, or dearest friend;

Whereas families, law enforcement agencies, communities, and States should unite to offer much needed support and to provide a strong voice for the endangered and involuntarily missing adults of our Nation;

Whereas we must support and encourage the citizens of our Nation to continue with efforts to awaken our Nation's awareness to the plight of our missing adults;

Whereas we must improve and promote reporting procedures involving missing adults and unidentified deceased persons; and

Whereas our Nation's awareness, acknowledgment, and support of missing adults, and encouragement of efforts to continue our search for these adults, must continue from this day forward: Now, therefore, be it

Resolved, That the Senate—

(1) designates August 2003, as ''National Missing Adult Awareness Month''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

SENATE RESOLUTION 214—CONGRATULATING LANCE ARMSTRONG FOR WINNING THE 2003 TOUR DE FRANCE

Mrs. HUTCHISON (for herself, Mr. CORNYN, Ms. SNOWE, Mr. BROWNBACK, Mr. CHAMBLISS, Mr. BOND, Ms. COLLINS, Mr. ENSIGN, Mr. DASCHLE, Mr. NICKLES, Mr. LAUTENBERG, Mr. BIDEN, Mr. INOUYE, Mrs. CLINTON, Mr. ALLARD, Mrs. MURRAY, Mr. DORGAN, Mr. WYDEN, and Mr. PRYOR) submitted the following resolution; which was considered and agreed to:

S. RES. 214

Whereas Lance Armstrong won the 2003 Tour de France, the 100th anniversary of the race, by completing the 2,125-mile, 23-day course in 83 hours, 41 minutes, and 12 seconds, finishing 1 minute and 1 second ahead of his nearest competitor;

Whereas Lance Armstrong's win on July 27, 2003, marks his fifth Tour de France victory;

Whereas, with this victory, Lance Armstrong joined Miguel Indurain as the only riders in history to win cycling's most prestigious race in 5 consecutive years;

Whereas Lance Armstrong displayed incredible perseverance, determination, and leadership in prevailing over the mountainous terrain of the Alps and Pyrenees and in overcoming crashes, illness, hard-charging rivals, and driving rain on the way to winning the premier cycling event in the world;

Whereas, in 1997, Lance Armstrong defeated choriocarcinoma, an aggressive form of testicular cancer that had spread throughout his abdomen, lungs, and brain, and after treatment has remained cancer-free for the past 6 years;

Whereas Lance Armstrong is the first cancer survivor to win the Tour de France;

Whereas Lance Armstrong's courage and resolution to overcome cancer has made him a role model to cancer patients and their loved ones, and his efforts through the Lance Armstrong Foundation have helped to advance cancer research, diagnosis, and treatment, and after-treatment services;

Whereas Lance Armstrong continues to be the face of cycling as a sport, a healthy fitness activity, and a pollution-free transportation alternative; and

Whereas Lance Armstrong's accomplishments as an athlete, teammate, cancer survivor, and advocate have made him an inspiration to millions of people around the world: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates Lance Armstrong and the United States Postal Service team on their historic victory in the 2003 Tour de France; and

(2) commends the unwavering commitment to cancer awareness and survivorship demonstrated by Lance Armstrong.

SEC. 2. The Secretary of the Senate shall transmit an enrolled copy of this resolution to Lance Armstrong.

SENATE RESOLUTION 215—TO AUTHORIZE REPRESENTATION BY THE SENATE LEGAL COUNSEL IN THE CASE OF WAGNER V. UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, ET AL

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 215

Whereas, the United States Senate Committee on the Judiciary and Senator Orrin G. Hatch have been named as defendants in the case of Wagner v. United States Senate Committee on the Judiciary, et al., No. 1:03CV01225 (RMU), pending in the United States District Court for the District of Columbia.

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend in civil actions Committees of the Senate, and Members of the Senate relating to the Members' official responsibilities: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the United States Senate Committee on the Judiciary and Senator Orrin G. Hatch in the case of Wagner v. United States Senate Committee on the Judiciary, et al.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1436. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table.

SA 1437. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1438. Mr. DAYTON (for himself and Mr. BOND) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1439. Mr. WYDEN (for himself, Mr. BROWNBACK, and Mr. CRAIG) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1440. Mr. WYDEN (for himself, Mr. SMITH, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1441. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1442. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1443. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1444. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1445. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1446. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1447. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1448. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1449. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1450. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1451. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1452. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1453. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1454. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1455. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1456. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1457. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1458. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1459. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1460. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1461. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1462. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1463. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1464. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1465. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1466. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1467. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1468. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1469. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1470. Ms. CANTWELL (for herself and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1471. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1472. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1473. Mr. SMITH (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1474. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1475. Mr. SANTORUM (for himself and Mr. ROCKEFELLER) submitted an amendment intended to be proposed to amendment SA 1424 submitted by Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DOMENICI, and Mr. BINGAMAN) and intended to be proposed to the bill S. 14, supra; which was ordered to lie on the table.

SA 1476. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1477. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1478. Mr. BINGAMAN (for himself and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S.14, supra; which was ordered to lie on the table.

SA 1479. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1480. Mr. BINGAMAN (for himself, Ms. COLLINS, Mr. JEFFORDS, Mr. CHAFEE, Mr. DORGAN, and Ms. CANTWELL) submitted an amendment intended to be proposed by him to the bill S.14, supra; which was ordered to lie on the table.

SA 1481. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1482. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1483. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1484. Mr. REID (for himself and Mr. ENSIGN) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1485. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1486. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1487. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1488. Mr. LAUTENBERG (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1489. Mr. LAUTENBERG (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1490. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1491. Mr. CONRAD submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1492. Mr. DURBIN (for himself and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1493. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1494. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1495. Mr. ROCKEFELLER (for himself and Mr. SANTORUM) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1496. Mr. HARKIN submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1497. Mr. HARKIN submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1498. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1499. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1500. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1501. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1502. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1503. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1504. Mr. SCHUMER submitted an amendment intended to be proposed by him

to the bill S. 14, supra; which was ordered to lie on the table.

SA 1505. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1506. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1507. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1508. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1509. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1510. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1511. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1512. Mr. SCHUMER (for himself and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1513. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1514. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1515. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1516. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, supra; which was ordered to lie on the table.

SA 1517. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1518. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1519. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1520. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1521. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 864 proposed by Mr. CAMPBELL to the bill S. 14, supra; which was ordered to lie on the table.

SA 1522. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, supra; which was ordered to lie on the table.

SA 1523. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, supra; which was ordered to lie on the table.

SA 1524. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1525. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1526. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1527. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, supra; which was ordered to lie on the table.

SA 1528. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1529. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1530. Mr. JEFFORDS (for himself, Mr. KERRY, Mr. REID, Mr. DURBIN, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1531. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, supra; which was ordered to lie on the table.

SA 1532. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1533. Mr. DURBIN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1534. Mr. BINGAMAN (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1535. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1536. Mr. DURBIN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1537. Mr. FRIST (for himself and Mr. DASCHLE) proposed an amendment to the bill H.R. 6, to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

SA 1538. Mr. SUNUNU (for Mr. ROBERTS (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill H.R. 2417, to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

SA 1539. Mr. SUNUNU (for Mr. HATCH) proposed an amendment to the concurrent resolution S. Con. Res. 25, recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month'', and for other purposes.

TEXT OF AMENDMENTS

SA 1436. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 159, between lines 11 and 12, insert the following:

SEC. 5___. AUTHORIZATION OF APPROPRIATIONS FOR REGIONAL FIELD VERIFICATION PROGRAM.

There is authorized to be appropriated to carry out the regional field verification program of the Department of Energy $4,000,000 for each of fiscal years 2004 through 2007.

SA 1437. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 9___. DEPARTMENT OF ENERGY GLOBAL CHANGE SCIENCE RESEARCH.

(a) IN GENERAL.—The Secretary, acting through the Director of Science, shall conduct a comprehensive research program to understand the global climate system and to investigate and analyze the effects of energy production and use on that system.

(b) PROGRAM ELEMENTS.—The program under subsection (a) shall include the following elements:

(1) Research and modeling activities on the radiation balance from the surface of the Earth to the top of the atmosphere, including the effects of aerosols and clouds.

(2) Research and modeling activities to investigate and understand the global carbon cycle, including the role of the terrestrial biosphere as a source or sink for carbon dioxide, and to develop, test, and improve carbon-cycle models.

(3) Research activities to understand the scales of response of complex ecosystems to environmental changes, including identifying the underlying causal mechanisms and pathways and how they are linked, and research and modeling activities on the response of terrestrial ecosystems to changes in climate, atmospheric composition, and land use.

(4) Research and modeling activities to develop integrated assessments of the economic, social, and environmental implications of climate change and policies related to climate change, with emphasis on improving the resolution of models for integrated assessments on a regional basis (including States and territories of the United States in the Pacific, on the Gulf of Mexico, or in agricultural or forested areas of the continental United States), developing and improving models for technology innovation and diffusion, and developing and improving models of the economic costs and benefits of climate change and policies related to climate change.

(5) Development of high-end computational resources, information technologies, and data assimilation methods to carry out the program under subsection (a), to make more effective use of large and distributed data sets and observational data streams, and to increase the availability and utility of climate change and energy simulations to researchers and policy makers.

(c) EDUCATION AND INFORMATION DISSEMINATION.—

(1) IN GENERAL.—The Secretary shall include education and training of undergraduate and graduate students as an integral part of the program under subsection (a), in collaboration with similar programs in other Federal agencies.

(2) CARBON DIOXIDE INFORMATION AND ANALYSIS CENTER.—The Secretary shall support a

Carbon Dioxide Information and Analysis Center to serve as a resource to researchers and others interested in global climate change and to accommodate data and information requests related to the greenhouse effect and global climate change.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(A) $150,000,000 for fiscal year 2004;

(B) $175,000,000 for fiscal year 2005;

(C) $200,000,000 for fiscal year 2006;

(D) $230,000,000 for fiscal year 2007; and

(E) $266,000,000 for fiscal year 2008.

(2) AVAILABILITY OF FUNDS.—Amounts made available under paragraph (1) shall remain available until expended.

(3) LIMITATION ON FUNDS.—Amounts made available under paragraph (1) shall not be used for the development, demonstration, or deployment of technology to reduce, avoid, or sequester greenhouse gas emissions.

SA 1438. Mr. DAYTON (for himself and Mr. BOND) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

Subtitle E—Bioenergy Program

SEC. 541. BIOENERGY PROGRAM.

Section 9010 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8108) is amended—

(1) in subsection (b)(3), by adding at the end the following:

''(C) BASE BIODIESEL PRODUCTION GROSS PAYABLE UNITS.—The quantity of base biodiesel production gross payable units under the program for an eligible producer shall be determined by—

''(i) dividing—

''(I) the base production; by

''(II) the biodiesel conversion factor of 1.4; and

''(ii) multiplying the result by—

''(I) in the case of the first year of participation by the eligible producer in the program, 0.5;

''(II) in the case of the second year of participation by the eligible producer in the program, 0.3;

''(III) in the case of the third year of participation by the eligible producer in the program, 0.15; and

''(IV) in the case of the fourth and subsequent year of participation by the eligible producer in the program, 0.''; and

(2) in subsection (c)(1), by striking ''not more than''.

SA 1439. Mr. WYDEN (for himself, Mr. BROWNBACK, and Mr. CRAIG) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—SOIL AND FOREST CARBON SEQUESTRATION PROGRAM

SEC. ___01. DEFINITIONS.

In this title:

(1) ADVISORY PANEL.—The term ''Advisory Panel'' means the Soil and Forestry Carbon Sequestration Panel established under section ___05.

(2) ELIGIBLE FOREST CARBON ACTIVITY.—The term ''eligible forest carbon activity'' means a forest management action that—

(A)(i) helps restore forest land that has been underproducing or understocked for more than 5 years; or

(ii) maintains natural forest under a permanent conservation easement;

(B) provides for protection of a forest from nonforest use;

(C) allows a variety of sustainable management alternatives;

(D) maintains or improves a watershed or fish and wildlife habitat; or

(E) demonstrates permanence of carbon sequestration and promotes and sustains native species.

(3) FOREST CARBON RESERVOIR.—The term ''forest carbon reservoir'' means carbon that is stored in aboveground or underground soil and other biomass that are associated with a forest ecosystem.

(4) FOREST CARBON SEQUESTRATION PROGRAM.—The term ''forest carbon sequestration program'' means the program established under section ___02.

(5) FOREST LAND.—

(A) IN GENERAL.—The term ''forest land'' means a parcel of land that is, or has been, at least 10 percent stocked by forest trees of any size.

(B) INCLUSIONS.—The term ''forest land'' includes—

(i) land on which forest cover may be naturally or artificially regenerated; and

(ii) a transition zone between a forested area and nonforested area that is capable of sustaining forest cover.

(6) FOREST MANAGEMENT ACTION.—

(A) IN GENERAL.—The term ''forest management action'' means an action that—

(i) applies forestry principles to the regeneration, management, use or conservation of forests to meet specific goals and objectives;

(ii) demonstrates permanence of carbon sequestration and promotes and sustains native species; and

(iii) maintains the ecological sustainability and productivity of the forests or protects natural forests under a permanent conservation easement.

(B) INCLUSIONS.—The term ''forest management action'' includes management and use of forest land for the benefit of aesthetics, fish, recreation, urban values, water, wilderness, wildlife, wood products, or other forest values.

(7) REFORESTATION.—

(A) IN GENERAL.—The term ''reforestation'' means the reestablishment of forest cover naturally or artificially.

(B) INCLUSIONS.—The term ''reforestation'' includes planned replanting, reseeding, and natural regeneration.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(9) SOIL CARBON SEQUESTRATION PROGRAM.—The term ''soil carbon sequestration program'' means the program established under section ___03.

(10) STATE.—The term ''State'' includes a political subdivision of a State.

(11) WILLING OWNER.—The term ''willing owner'' means a State or local government, Indian tribe, private entity, or other person or non-Federal organization that owns forest land and is willing to participate in the forest carbon sequestration program.

SEC. ___02. FOREST CARBON SEQUESTRATION PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Chief of the Forest Service and in collaboration with State foresters, State resource management agencies, and interested nongovernmental organizations, shall establish a forest carbon sequestration program under which the Secretary, directly or through agreements with 1 or more States, may enter into cooperative agreements with willing owners of forest land to carry out forest management actions or eligible forest carbon activities on not more than a total of 5,000 acres of forest land holdings to create or maintain a forest carbon reservoir.

(b) ASSISTANCE TO STATES.—

(1) IN GENERAL.—The Secretary shall provide assistance to States for the purpose of entering into cooperative agreements with willing owners of forest land to carry out eligible forest carbon activities on forest land.

(2) REPORTING.—As a condition of receiving assistance under paragraph (1), a State shall annually submit to the Secretary a report disclosing the estimated quantity of carbon stored through the cooperative agreement.

(c) BONNEVILLE POWER ADMINISTRATION.—Each of the States of Washington, Oregon, Idaho, and Montana may apply for funding from the Bonneville Power Administration for purposes of funding a cooperative agreement that meets the fish and wildlife objectives and priorities of the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.), but only to the extent the cooperative agreement also meets the objectives of this section.

SEC. ___03. SOIL CARBON SEQUESTRATION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary, acting through the Natural Resources Conservation Service and in cooperation with the Consortium for Agricultural Soils Mitigation of Greenhouse Gases, shall carry out 4 or more pilot programs to—

(A) develop, demonstrate, and verify the best management practices for enhanced soil carbon sequestration on agricultural land; and

(B) evaluate and establish standardized monitoring and verification methods and protocols.

(2) CRITERIA.—The Secretary shall select a pilot program based on—

(A) the merit of the proposed program; and

(B) the diversity of soil types, climate zones, crop types, cropping patterns, and sequestration practices available at the site of the proposed program.

(b) REQUIREMENTS.—A pilot program carried out under this section shall—

(1) involve agricultural producers in—

(A) the development and verification of best management practices for carbon sequestration; and

(B) the development and evaluation of carbon monitoring and verification methods and protocols on agricultural land;

(2) involve research and testing of the best management practices and monitoring and verification methods and protocols in various soil types and climate zones;

(3) analyze the effects of the adoption of the best management practices on—

(A) greenhouse gas emissions, water quality, and other aspects of the environment at the watershed level; and

(B) the full range of greenhouse gases; and

(4) use the results of the research conducted under the program to—

(A)(i) develop best management practices for use by agricultural producers;

(ii) provide a comparison of the costs and net greenhouse effects of the best management practices; and

(iii) encourage agricultural producers to adopt the best management practices; and

(B) develop best management practices on a regional basis for use in watersheds and States not participating in the pilot programs.

SEC. ___04. SOIL AND FORESTRY CARBON SEQUESTRATION PANEL.

(a) ESTABLISHMENT.—The Secretary (acting through the Chief of the Forest Service and the Natural Resources Conservation Service) and the Secretary of Energy (acting through

the Administrator of the Energy Information Administration) shall establish a Soil and forestry Carbon Sequestration Panel for the purposes of—

(1) advising the Secretary and the Secretary of Energy in the development and updating of guidelines for accurate voluntary reporting of greenhouse gas sequestration from forest management actions and agricultural best management practices;

(2) evaluating the potential effectiveness (including cost effectiveness) of the guidelines, in verifying carbon inputs and outputs and assessing impacts on other greenhouse gases from various forest management strategies and agricultural best management practices;

(3) estimating the effect of proposed implementation of the guidelines on—

(A) carbon sequestration and storage; and

(B) the net emissions of other greenhouse gases;

(4) providing estimates on the rates of carbon sequestration and net nitrous oxide and methane impacts for forests and various plants, agricultural commodities, and agricultural practices for the purpose of assisting the Secretary in determining the acceptability of the cooperative agreement offers made by willing owners;

(5) proposing to the Secretary and the Secretary of Energy standardized methods for—

(A) measuring carbon sequestered in soils and in forests; and

(B) estimating the impacts of the forest carbon sequestration program and the soil carbon sequestration program on other greenhouse gases; and

(6) assisting the Secretary and the Secretary of Energy in reporting to Congress on the results of the forest carbon sequestration program and the soil carbon sequestration program.

(b) MEMBERSHIP.—The Advisory Panel shall be composed of the following members with interest and expertise in soil carbon sequestration and forestry management, appointed jointly by the Secretary and the Secretary of Energy:

(1) 1 member representing national professional forestry organizations.

(2) 1 member representing national agriculture organizations.

(3) 2 members representing environmental or conservation organizations.

(4) 1 member representing Indian tribes.

(5) 3 members representing the academic scientific community.

(6) 2 members representing State forestry organizations.

(7) 2 members representing State agricultural organizations.

(8) 1 member representing the Environmental Protection Agency.

(9) 1 member representing the Department of Agriculture.

(c) TERMS.—

(1) IN GENERAL.—Except as provided in paragraph (2) a member of the Advisory Panel shall be appointed for a term of 3 years.

(2) INITIAL TERMS.—Of the members first appointed to the Advisory Panel—

(A) 1 member appointed under each paragraphs (2), (4), (6), and (8) shall serve an initial term of 1 year; and

(B) 1 member appointed under each of paragraphs (1), (3), (5), (7), and (9) shall serve an initial term of 2 years.

(3) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Advisory Panel shall be filled in the manner in which the original appointment was made.

(B) PARTIAL TERM.—A member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of the term.

(C) SUCCESSIVE TERMS.—An individual may not be appointed to serve on the Advisory Panel for more than 2 full consecutive terms.

(d) EXISTING COUNCILS.—The Secretary and the Secretary of Energy may use an existing council to perform the tasks of the Advisory Panel if—

(1) representation on the council, the terms and background of members of the council, and the responsibilities of the council reflect those of the Advisory Panel; and

(2) those responsibilities are a priority for the council.

SEC. ___05. STANDARDIZATION OF CARBON SEQUESTRATION MEASUREMENT PROTOCOLS.

(a) ACCURATE MONITORING, MEASUREMENT, AND REPORTING.—

(1) IN GENERAL.—The Secretary and the Secretary of Energy, in collaboration with the States, shall—

(A) develop standardized measurement protocols for—

(i) carbon sequestered in soils and trees; and

(ii) impacts on other greenhouse gases;

(B)(i) develop standardized forms to monitor sequestration improvements made as a result of the forest carbon sequestration program and the soil carbon sequestration program; and

(ii) distribute the forms to participants in the forest carbon sequestration program and the soil carbon sequestration program; and

(C) at least once every 5 years, submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Energy and Natural Resources of the Senate and the Committee on Agriculture and the Committee on Resources of the House of Representatives a report on the forest carbon sequestration program and the soil carbon sequestration program.

(2) CONTENTS OF REPORT.—A report under paragraph (1)(C) shall describe—

(A) carbon sequestration improvements made as a result of the forest carbon sequestration program and the soil carbon sequestration program;

(B) carbon sequestration practices on land owned by participants in the forest carbon sequestration program and the soil carbon sequestration program; and

(C) the degree of compliance with any cooperative agreements, contracts, or other arrangements entered into under this title.

(b) EDUCATIONAL OUTREACH.—The Secretary, acting through the Cooperative State Research, Education, and Extension Service, and in consultation with the Consortium for Agricultural Soils Mitigation of Greenhouse Gases, shall conduct an educational outreach program to collect and disseminate to owners and operators of agricultural and forest land research-based information on agriculture and forest management practices that will increase the sequestration of carbon, without threat to the social and economic well-being of communities.

(c) PERIODIC REVIEW.—At least once every 2 years, the Secretary and the Secretary of Energy shall—

(1) convene the Advisory Panel to evaluate the latest scientific and observational information on reporting, monitoring, and verification of carbon storage from forest management and soil sequestration actions; and

(2) issue revised recommendations for reporting, monitoring, and verification of carbon storage from forest management actions and agricultural best management practices as necessary.

SEC. ___06. AUTHORIZATION OF APPROPRIATION.

There are authorized to be appropriated such sums as are necessary to carry out this title.

SA 1440. Mr. WYDEN (for himself, Mr. SMITH, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—MISCELLANEOUS

SEC. ___. OFFICE OF CONSUMER ADVOCACY.

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) ENERGY CUSTOMER.—The term ''energy customer'' means a residential customer or a small commercial customer that receives products or services from a public utility or natural gas company under the jurisdiction of the Commission.

(3) NATURAL GAS COMPANY.—The term ''natural gas company'' has the meaning given the term in section 2 of the Natural Gas Act (15 U.S.C. 717a), as modified by section 601(a) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3431(a)).

(4) OFFICE.—The term ''Office'' means the Office of Consumer Advocacy established by subsection (b)(1).

(5) PUBLIC UTILITY.—The term ''public utility'' has the meaning given the term in section 201(e) of the Federal Power Act (16 U.S.C. 824(e)).

(6) SMALL COMMERCIAL CUSTOMER.—The term ''small commercial customer'' means a commercial customer that has a peak demand of not more than 1,000 kilowatts per hour.

(b) OFFICE.—

(1) ESTABLISHMENT.—There is established within the Department of Energy the Office of Consumer Advocacy.

(2) DIRECTOR.—The Office shall be headed by a Director to be appointed by the President, by and with the advice and consent of the Senate.

(3) DUTIES.—The Office may represent the interests of energy customers on matters concerning rates or service of public utilities and natural gas companies under the jurisdiction of the Commission—

(A) at hearings of the Commission;

(B) in civil actions brought in connection with any function carried out by the Commission, except as provided in section 518 of title 28, United States Code; and

(C) at hearings or proceedings of other Federal regulatory agencies and commissions.

SA 1441. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—UNEMPLOYMENT COMPENSATION

SEC. ___. ADDITIONAL WEEKS OF TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR EXHAUSTEES.

(a) ADDITIONAL WEEKS.—Section 203 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) is amended by adding at the end the following:

''(d) INCREASED AMOUNTS IN ACCOUNT FOR CERTAIN EXHAUSTEES.—

''(1) IN GENERAL.—In the case of an eligible exhaustee, this Act shall be applied as follows:

''(A) Subsection (b)(1)(A) shall be applied by substituting '100 percent' for '50 percent'.

''(B) Subsection (b)(1)(B) shall be applied by substituting '26 times' for '13 times'.

''(C) Subsection (c)(1) shall be applied by substituting '7 times the individual's average weekly benefit amount for the benefit year' for 'the amount originally established in such account (as determined under subsection (b)(1))'.

''(D) Section 208(b) shall be applied—

''(i) in paragraph (1), as if '', including such compensation payable by reason of amounts deposited in such account after such date pursuant to the application of subsection (c) of such section'' were inserted before the period at the end;

''(ii) as if paragraph (2) had not been enacted; and

''(iii) in paragraph (3), by substituting ''the date that is 21 weeks after the date of enactment of Energy Policy Act of 2003'' for ''March 31, 2004''.

''(2) ELIGIBLE EXHAUSTEE DEFINED.—For purposes of this subsection, the term 'eligible exhaustee' means an individual—

''(A) to whom any temporary extended unemployment compensation was payable for any week beginning before the date of enactment of this subsection; and

''(B) who exhausted such individual's rights to such compensation (by reason of the payment of all amounts in such individual's temporary extended unemployment compensation account, including amounts deposited in such account by reason of subsection (c)) before such date of enactment.''.

(b) EFFECTIVE DATE AND APPLICATION.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply with respect to weeks of unemployment beginning on or after the date of enactment this Act.

(2) TEUC–X AMOUNTS DEPOSITED IN ACCOUNT PRIOR TO DATE OF ENACTMENT DEEMED TO BE THE ADDITIONAL TEUC AMOUNTS PROVIDED BY THIS SECTION.—In applying the amendment made by subsection (a) under the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 26), the Secretary of Labor shall deem any amounts deposited into an eligible exhaustee's (as defined in section 203(d)(2) of the Temporary Extended Unemployment Compensation Act of 2002, as added by subsection (a)) temporary extended unemployment compensation account by reason of section 203(c) of such Act (commonly known as ''TEUC–X amounts'') prior to the date of enactment of this Act to be amounts deposited in such account by reason of section 203(b) of such Act, as amended by subsection (a) (commonly known as ''TEUC amounts'').

(3) REDETERMINATION OF ELIGIBILITY FOR AUGMENTED AMOUNTS FOR ALL ELIGIBLE EXHAUSTEES.—The determination of whether the eligible exhaustee's (as so defined) State was in an extended benefit period under section 203(c) of such Act that was made prior to the date of enactment of this Act shall be disregarded and the determination under such section, as amended by subsection (a) with respect to eligible exhaustees (as so defined), shall be made as follows:

(A) ELIGIBLE EXHAUSTEES WHO RECEIVED AND EXHAUSTED TEUC–X AMOUNTS.—In the case of an eligible exhaustee whose temporary extended unemployment account was augmented under such section 203(c) before the date of enactment of this Act, the determination shall be made as of such date of enactment.

(B) ELIGIBLE EXHAUSTEES WHO EXHAUSTED TEUC AMOUNTS BUT WERE NOT ELIGIBLE FOR TEUC–X AMOUNTS.—In the case of an eligible exhaustee whose temporary extended unemployment account was not augmented under such section 203(c) as of the date of enactment of this Act, the determination shall be made at the time that the individual's account established under section 203 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28), as amended by subsection (a), is exhausted.

SEC. ___. TEMPORARY AVAILABILITY OF EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT FOR EMPLOYEES WITH LESS THAN 10 YEARS OF SERVICE.

Section 2(c)(2) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(c)(2)) is amended by adding at the end the following:

''(D) TEMPORARY AVAILABILITY OF EXTENDED UNEMPLOYMENT BENEFITS FOR EMPLOYEES WITH LESS THAN 10 YEARS OF SERVICE.—

''(i) IN GENERAL.—Subject to clause (ii), in the case of an employee who has less than 10 years of service (as so defined), with respect to extended unemployment benefits, this paragraph shall apply to such an employee in the same manner as this paragraph applies to an employee who has 10 or more years of service (as so defined).

''(ii) APPLICATION.—Clause (i) shall apply to—

''(I) an employee who received normal benefits for days of unemployment under this Act during the period beginning on July 1, 2002, and ending on December 31, 2003; and

''(II) days of unemployment beginning on or after the date of enactment of the this subparagraph.''.

SA 1442. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII of division B, add the following:

SEC. _____. CERTAIN STEAM GENERATORS OR OTHER GENERATING BOILERS USED IN NUCLEAR FACILITIES AND CERTAIN REACTOR VESSEL HEADS USED IN SUCH FACILITIES.

(a) IN GENERAL.—

(1) Subheading 9902.84.02 of the Harmonized Tariff Schedule of the United States is amended by striking ''12/31/2006'' and inserting ''12/31/2012''.

(2) Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

''	9902.84.03	Reactor vessel heads for nuclear reactors (provided for in subheading 8401.40.00).	Free	No change	No change	On or before 12/31/2012	''

(b) EFFECTIVE DATE.—The amendments made by subsection (a)(2) shall apply to goods entered, or withdrawn from warehouse, for consumption on or after January 1, 2005.

SA 1443. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 150, between liens 14 and 15, insert the following:

SEC. 44___. FERNALD URANIUM PROCESSING FACILITY OF THE DEPARTMENT OF ENERGY.

(a) DEFINITIONS.—In this section:

(1) BYPRODUCT MATERIAL.—The term ''byproduct material'' has the meaning given the term in section 11e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

(2) COMMISSION.—The term ''Commission'' means the Nuclear Regulatory Commission.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(b) FERNALD FACILITY MATERIAL.—Notwithstanding any other provision of law, the material contained in concrete silos at the Fernald uranium processing facility managed, as of the date of enactment of this Act, by the Department of Energy, shall be considered to be byproduct material.

(c) DISPOSAL.—With respect to the material described in subsection (b)—

(1) the Secretary may dispose of the material in a facility under the jurisdiction of the Commission or a State; and

(2) on disposal of the material in a facility under paragraph (1), the material shall be regulated by the Commission or the State with jurisdiction over the facility.

(d) JURISDICTION AND APPLICABLE AUTHORITY.—Material described in subsection (b)—

(1) shall remain subject to the jurisdiction of the Secretary until such time as the material is received at a commercial disposal facility that is licensed by the Commission or a State; and

(2) after being received at a facility described in paragraph (1), shall be subject to the health and safety requirements of the Commission or State, as the case may be, with jurisdiction over the facility.

SA 1444. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII add the following:

Subtitle D—Advanced Clean Vehicle Demonstration Program

SEC. 741. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE FUELED VEHICLE.—The term ''alternative fueled vehicle'' means a vehicle propelled solely on an alternative fuel as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211), except the term does not include any vehicle that the Secretary determines, by rule, does not yield substantial environmental benefits over a vehicle operating solely on gasoline or diesel derived from fossil fuels.

(2) FUEL CELL VEHICLE.—The term ''fuel cell vehicle'' means a vehicle propelled by an electric motor powered by a fuel cell system that converts chemical energy into electricity by combining oxygen (from air) with hydrogen fuel that is stored on the vehicle or is produced onboard by reformation of a hydrocarbon fuel. Such a fuel cell system may, but is not required to, include the use of auxiliary energy storage systems to enhance vehicle performance.

(3) HYBRID VEHICLE.—The term ''hybrid vehicle'' means—

(A) a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

(i) an internal combustion or heat engine using combustible fuel; and

(ii) a rechargeable energy storage system; and

(B) any other vehicle that is defined as a hybrid vehicle in regulations prescribed by the Secretary of Energy for the administration of title III of the Energy Policy Act of 1992.

(4) NEIGHBORHOOD ELECTRIC VEHICLE.—The term ''neighborhood electric vehicle'' means a motor vehicle capable of traveling at speeds of 25 miles per hour that is—

(A) a low-speed vehicle, as such term is defined in section 571.3(b) of title 49, Code of Federal Regulations;

(B) a zero-emission vehicle, as such term is defined in section 86.1702–99 of title 40, Code of Federal Regulations; and

(C) otherwise lawful to use on local streets.

(5) PILOT PROGRAM.—The term ''pilot program'' means the competitive grant program established under section 742.

(6) STATE.—The term ''State'' includes the District of Columbia and the Commonwealth of Puerto Rico.

(7) ULTRA-LOW SULFUR DIESEL VEHICLE.—The term ''ultra-low sulfur diesel vehicle'' means a vehicle manufactured in model year 2002, 2003, 2004, 2005, or 2006 powered by a heavy-duty diesel engine that—

(A) is fueled by diesel fuel which contains sulfur at not more than 15 parts per million; and

(B) emits not more than the lesser of—

(i) for vehicles manufactured in—

(I) model years 2002 and 2003, 3.0 grams per brake horsepower-hour of oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(II) model years 2004 through 2006, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; or

(ii) the emissions of nonmethane hydrocarbons, oxides of nitrogen, and particulate matter of the best performing technology of ultra-low sulfur diesel vehicles of the same class and application that are commercially available.

SEC. 742. GRANT PILOT PROGRAM.

(a) REQUIREMENT FOR PROGRAM.—The Secretary of Energy shall establish a competitive grant pilot program to provide project grants to eligible recipients to carry out a project or projects for the purposes described in subsection (c).

(b) ELIGIBLE RECIPIENTS.—The following entities are eligible to receive a grant under the pilot program:

(1) A State government.

(2) The government of a political subdivision of a State.

(3) Any person other than an individual.

(4) Any combination of entities described in paragraphs (1), (2), and (3), acting together to carry out one or more projects for the purposes described in subsection (c).

(c) GRANT PURPOSES.—Grants under this section may be used for the following purposes:

(1) The acquisition of qualified alternative fueled vehicles or fuel cell vehicles for routine operation in service normal for motor vehicles, including (among other vehicles)—

(A) passenger vehicles, including neighborhood electric vehicles; and

(B) motorized two-wheel bicycles, scooters, or other vehicles for use by law enforcement personnel or other State or local government or metropolitan transportation authority employees.

(2) The acquisition of qualified alternative fueled vehicles, hybrid vehicles, or fuel cell vehicles for regular and routine operation in service normal for motor vehicles, including (among other vehicles)—

(A) buses used for public transportation or transportation to and from schools;

(B) delivery vehicles for goods or services;

(C) ground support vehicles at public airports, including vehicles to carry baggage or push airplanes away from terminal gates; and

(D) vehicles used for the collection of recyclable garbage or other garbage.

(3) The acquisition of ultra-low sulfur diesel vehicles for regular and routine operation in service normal for motor vehicles.

(4) Infrastructure necessary to directly support an alternative fueled vehicle, fuel cell vehicle, or hybrid vehicle project funded by the grant, including fueling and other support equipment.

(5) Operation and maintenance of vehicles, infrastructure, and equipment acquired as part of a project funded by the grant.

(d) QUALIFIED VEHICLES.—An alternative fueled vehicle, hybrid vehicle, or fuel cell vehicle is qualified for the purposes of subsection (c) if—

(1) in the case of a vehicle to which an emission standard applies under law, the emissions resulting from the operation of such vehicle are less than the applicable standard; or

(2) in the case of any gasoline-consuming motor vehicle, the fuel economy of such vehicle (as defined in section 32901(a) of title 49, United States Code) exceeds by at least 25 percent the average fuel economy standard applicable to the vehicle under chapter 329 of title 49, United States Code.

(e) APPLICATIONS.—

(1) REQUIREMENTS.—The Secretary shall prescribe the requirements for applying for grants under the pilot program. At a minimum, the Secretary shall require that applications include, for each project proposed in the application, the following:

(A) A description of the project, including how the project meets the requirements of this subtitle.

(B) An estimate of the ridership or degree of use of the project.

(C) An estimate of the air pollution emissions reduced and fossil fuel displaced as a result of the project, together with a plan to collect and disseminate environmental data, related to the project over the expected life of the project.

(D) A description of how the project is to be sustainable without Federal assistance after the completion of the term of the grant.

(E) A complete description of the costs of the project, including acquisition, construction, operation, and maintenance costs over the expected life of the project.

(F) A description of which costs of the project are to be supported by Federal assistance under this subtitle.

(G) In the case of a project involving diesel-fueled vehicles, documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the project, together with a commitment by the applicant to use such fuel in carrying out the project.

(2) PARTNERS.—An applicant under paragraph (1) may carry out any project under the pilot program in partnership with public and private entities.

(f) SELECTION CRITERIA.—In evaluating applications under the pilot program, the Secretary shall consider each applicant's previous experience with similar projects and shall give priority consideration to applications that—

(1) propose one or more projects that are most likely—

(A) to cost-effectively reduce vehicle operation emissions; and

(B) to cost-effectively reduce use of fossil fuel in the operation of vehicles;

(2) propose one or more projects that are—

(A) to be carried out or sponsored by a government referred to in paragraph (1) or (2) of subsection (b); or

(B) coordinated with such a government or with a metropolitan planning organization of such a government;

(3) demonstrate the greatest commitment on the part of the applicant or applicants to ensure funding for the proposed project or projects and the greatest likelihood that each project will be maintained or expanded after Federal assistance under this subtitle is completed; and

(4) exceed the minimum requirements of subsection (e)(1).

(g) PILOT PROJECT REQUIREMENTS.—

(1) MAXIMUM AMOUNT.—The Secretary shall not provide more than $20,000,000 in Federal assistance under the pilot program for any project.

(2) COST SHARING.—

(A) FEDERAL SHARE.—The Secretary shall not provide more than 50 percent of the cost, incurred during the period of the grant, of any project under the pilot program.

(B) APPLICANT SHARE.—The applicant or applicants for a grant for a project under the pilot program shall provide funding for the project in an amount that equals or exceeds the higher of the following amounts:

(i) $1,000,000.

(ii) The amount equal to 20 percent of the total cost of the project.

(3) MAXIMUM PERIOD OF GRANTS.—The Secretary shall not fund any applicant under the pilot program for more than 5 years.

(4) DEPLOYMENT AND DISTRIBUTION.—The Secretary shall seek to the maximum extent practicable to ensure—

(A) a broad geographic distribution of project sites under the pilot program; and

(B) the operation of vehicles acquired with the proceeds of pilot program grants under a variety of vehicle operating environments, including exposure to extreme weather conditions and operation of the vehicles in various modes of service under a variety of operational demands.

(5) TRANSFER OF INFORMATION AND KNOWLEDGE.—The Secretary shall establish mechanisms to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(h) SCHEDULE.—

(1) PUBLICATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall publish in the Federal Register, Commerce Business Daily, and elsewhere as appropriate, a solicitation of applications for grants for projects under the pilot program. Applications shall be due within 180 days after the publication of the first published notice.

(2) COMPETITIVE SELECTION.—Not later than 180 days after the date by which applications for grants are due, the Secretary shall select by competitive, peer review all applications for projects to be awarded a grant under the pilot program.

(h) FUNDING FOR ULTRA-LOW SULFUR DIESEL VEHICLES.—Of the total amount available for a fiscal year for grants under the pilot program, not less than 20 percent and not more than 25 percent of the grant funding shall be available only for the acquisition of ultra-low sulfur diesel vehicles.

SEC. 743. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary of Energy for carrying out this subtitle, $40,000,000 for each of fiscal years 2004, 2005, 2006, 2007, and 2008, to remain available until expended.

SA 1445. Mr. LEVIN submitted an amendment intended to be proposed to

amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII add the following:

SEC. 736. GRANTS TO INCREASE PRODUCTION OF ENGINES FOR HEAVY-DUTY CLEAN DIESEL TRUCKS.

(a) GRANTS.—The Secretary of Energy (in this section referred to as the ''Secretary'') may award grants to heavy-duty engine manufacturers for the purpose of funding the early production of a higher number of heavy-duty diesel engines for field testing in 2007 emissions standard-compliant heavy-duty vehicles than would otherwise be produced.

(b) 2007 EMISSIONS STANDARD-COMPLIANT HEAVY-DUTY VEHICLES.—For the purposes of this section, a 2007 emissions standard-compliant heavy-duty vehicle is a heavy-duty vehicle that is powered by a heavy-duty diesel engine and designed and manufactured to comply with the heavy-duty emission standards of 2007 (as that term is defined in section 734(c)).

(c) USE OF FUNDS.—The Secretary may not award a grant to a heavy-duty engine manufacturer under this section unless the manufacturer agrees to use the grant—

(1) to produce, not later than June 30, 2006, new heavy-duty diesel engines for the field testing program; or

(2) to improve infrastructure related to the production of such engines.

(d) APPLICATION.—To seek a grant under this section, a heavy-duty engine manufacturer shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(e) GUIDELINES FOR AWARD OF GRANTS.—In the awarding of grants under this section, the following guidelines shall apply:

(1) PURPOSE.—The purpose of the grant program is to accelerate and increase the production of heavy-duty diesel engines for field testing in 2007 emissions standard-compliant heavy-duty vehicles.

(2) PROGRESSIVELY DECREASING AMOUNTS OF AWARDS.—

(A) IN GENERAL.—In order to encourage early production of such engines, the Secretary shall administer the grant program so as to provide higher amounts in grants awarded early in the program than the grants that are awarded later in the program.

(B) DELIVERY PERIODS.—The Secretary shall divide the grant program into four successive periods for delivery of 2007 emissions standard-compliant heavy-duty vehicles, as follows:

(i) Period I shall be the period beginning upon commencement of the pilot program and ending on December 31, 2004.

(ii) Period II shall be the period beginning on January 1, 2005, and ending on June 30, 2005.

(iii) Period III shall be the period beginning on July 1, 2005, and ending on December 31, 2005.

(iv) Period IV shall be the period beginning on January 1, 2006, and ending on June 30, 2006.

(C) COMPUTATION OF TOTAL GRANT AMOUNT.—The amount of a grant for a recipient under the pilot program shall be the product of—

(i) an amount determined appropriate by the Secretary for each emissions standard-compliant heavy-duty vehicle that is powered by a heavy-duty diesel engine manufactured by the recipient and is delivered to user; and

(ii) the number of such vehicles that are delivered to users.

(D) PER VEHICLE AMOUNT.—The amount for each emissions standard-compliant heavy-duty vehicle shall be significantly higher for a vehicle that is delivered to the user in a period defined in subparagraph (B) than the amount for each such vehicle that is delivered to the user in the next successive period. The amount for each emissions standard-compliant heavy-duty vehicle that is delivered to the user in period IV shall be significantly lower than the amount for each such vehicle that is delivered to the user in period I. A vehicle delivered to the user after the end of period IV shall not be counted in the computation under subparagraph (C).

(3) MAXIMUM AMOUNT PER RECIPIENT.—No grant recipient may receive more than 30 percent of the total amount disbursed as grant proceeds under the grant program.

(f) REFUND OF GRANT PROCEEDS.—

(1) IN GENERAL.—The Secretary shall require a grant recipient to refund some or all of the grant proceeds the recipient received for the promise to manufacture a heavy-duty diesel engine for use in a 2007 emissions standard-compliant heavy-duty vehicle for delivery during a delivery period under subsection (e)(2)(B) if such vehicle is delivered later than the promised delivery period (in this section referred to as a ''late delivery'').

(2) AMOUNT OF REFUND.—The amount of grant proceeds refunded to the Secretary under paragraph (1) for a late delivery shall be—

(A) greater than or equal to the difference between—

(i) the amount that was awarded for the promise to deliver the vehicle during a delivery period under subsection (e)(2)(B); and

(ii) the amount that would have been awarded for the delivery of such vehicle during the period in which it was in fact delivered; and

(B) less than or equal to 100 percent of the amount awarded for the delivery of such vehicle.

(g) AWARD AND REFUND CRITERIA.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall, in consultation with the Administrator, develop and publish the criteria for—

(1) awarding grants pursuant to the guidelines in subsection (e); and

(2) calculating the amount of grant proceeds required to be refunded under subsection (f) in connection with late deliveries.

(h) CONSULTATION.—The Secretary shall consult with manufacturers of heavy-duty diesel engines to determine the costs associated with the accelerated and increased production of such engines for field testing purposes.

(i) DISSEMINATION OF INFORMATION.—The Secretary shall—

(1) in consultation with the Administrator, determine whether and how to share information regarding the performance of heavy-duty diesel engines developed and tested under the grant program, including information regarding durability, maintenance, and fuel economy; and

(2) publish the rationale for such determination in the Federal Register.

(j) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) FIELD TESTING.—The term ''field testing'' means the testing prior to mass production of 2007 emissions standard-compliant heavy-duty vehicles by fleets in coordination with heavy-duty diesel engine manufacturers.

(3) HEAVY-DUTY DIESEL ENGINE.—The term ''heavy-duty diesel engine'' means a diesel engine used to power a truck that is operated on public streets, roads, or highways and has a gross vehicle weight rating in excess of 8,500 pounds.

(4) HEAVY-DUTY DIESEL ENGINE MANUFACTURER.—The term ''heavy-duty diesel engine manufacturer'' means, with respect to a heavy-duty diesel engine, the company of record holding the engine certification issued by the United States for the manufacture of such engine.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the grant program under this section.

SA 1446. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII add the following:

SEC. 736. GRANTS TO INCREASE PRODUCTION OF CLEAN DIESEL MOTOR VEHICLES, HYBRID VEHICLES, AND FUEL CELL VEHICLES.

(a) GRANTS.—The Secretary of Commerce (in this section referred to as the ''Secretary'') may award grants to States and cities for use to assist one or more commercial enterprises in converting existing manufacturing facilities to produce—

(1) clean diesel motor vehicles;

(2) hybrid vehicles;

(3) fuel cell vehicles; or

(4) engines for use in such vehicles.

(b) USE OF FUNDS.—The proceeds of a grant may only be used for the following purposes:

(1) The conversion of manufacturing facilities as described in subsection (a).

(2) The improvement of infrastructure related to any such facility.

(c) APPLICATION.—To seek a grant under this section, a State or city shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(d) DEFINITIONS.—In this section:

(1) CLEAN DIESEL MOTOR VEHICLE.—The term ''clean diesel motor vehicle'' means a motor vehicle that—

(A) is powered by a diesel-fueled internal combustion engine; and

(B) meets the tier 2 emission standards.

(2) FUEL CELL VEHICLE.—The term ''fuel cell vehicle'' means a vehicle propelled by an electric motor powered by a fuel cell system that converts chemical energy into electricity by combining oxygen (from air) with hydrogen fuel that is stored on the vehicle or is produced onboard by reformation of a hydrocarbon fuel. Such a fuel cell system may, but is not required to, include the use of auxiliary energy storage systems to enhance vehicle performance.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SA 1447. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII add the following:

SEC. 736. GRANTS TO INCREASE PRODUCTION OF ENGINES FOR HEAVY-DUTY CLEAN DIESEL TRUCKS.

(a) GRANTS.—The Secretary of Energy (in this section referred to as the ''Secretary'') may award grants to heavy-duty engine manufacturers for the purpose of funding the

early production of a higher number of heavy-duty diesel engines for field testing in 2007 emissions standard-compliant heavy-duty vehicles than would otherwise be produced.

(b) 2007 EMISSIONS STANDARD-COMPLIANT HEAVY-DUTY VEHICLES.—For the purposes of this section, a 2007 emissions standard-compliant heavy-duty vehicle is a heavy-duty vehicle that is powered by a heavy-duty diesel engine and designed and manufactured to comply with the heavy-duty emission standards of 2007 (as that term is defined in section 734(c)).

(c) USE OF FUNDS.—The Secretary may not award a grant to a heavy-duty engine manufacturer under this section unless the manufacturer agrees to use the grant—

(1) to produce, not later than June 30, 2006, new heavy-duty diesel engines for the field testing program; or

(2) to improve infrastructure related to the production of such engines.

(d) APPLICATION.—To seek a grant under this section, a heavy-duty engine manufacturer shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(e) GUIDELINES FOR AWARD OF GRANTS.—In the awarding of grants under this section, the following guidelines shall apply:

(1) PURPOSE.—The purpose of the grant program is to accelerate and increase the production of heavy-duty diesel engines for field testing in 2007 emissions standard-compliant heavy-duty vehicles.

(2) PROGRESSIVELY DECREASING AMOUNTS OF AWARDS.—

(A) IN GENERAL.—In order to encourage early production of such engines, the Secretary shall administer the grant program so as to provide higher amounts in grants awarded early in the program than the grants that are awarded later in the program.

(B) DELIVERY PERIODS.—The Secretary shall divide the grant program into four successive periods for delivery of 2007 emissions standard-compliant heavy-duty vehicles, as follows:

(i) Period I shall be the period beginning upon commencement of the pilot program and ending on December 31, 2004.

(ii) Period II shall be the period beginning on January 1, 2005, and ending on June 30, 2005.

(iii) Period III shall be the period beginning on July 1, 2005, and ending on December 31, 2005.

(iv) Period IV shall be the period beginning on January 1, 2006, and ending on June 30, 2006.

(C) COMPUTATION OF TOTAL GRANT AMOUNT.—The amount of a grant for a recipient under the pilot program shall be the product of—

(i) an amount determined appropriate by the Secretary for each emissions standard-compliant heavy-duty vehicle that is powered by a heavy-duty diesel engine manufactured by the recipient and is delivered to user; and

(ii) the number of such vehicles that are delivered to users.

(D) PER VEHICLE AMOUNT.—The amount for each emissions standard-compliant heavy-duty vehicle shall be significantly higher for a vehicle that is delivered to the user in a period defined in subparagraph (B) than the amount for each such vehicle that is delivered to the user in the next successive period. The amount for each emissions standard-compliant heavy-duty vehicle that is delivered to the user in period IV shall be significantly lower than the amount for each such vehicle that is delivered to the user in period I. A vehicle delivered to the user after the end of period IV shall not be counted in the computation under subparagraph (C).

(3) MAXIMUM AMOUNT PER RECIPIENT.—No grant recipient may receive more than 30 percent of the total amount disbursed as grant proceeds under the grant program.

(f) REFUND OF GRANT PROCEEDS.—

(1) IN GENERAL.—The Secretary shall require a grant recipient to refund some or all of the grant proceeds the recipient received for the promise to manufacture a heavy-duty diesel engine for use in a 2007 emissions standard-compliant heavy-duty vehicle for delivery during a delivery period under subsection (e)(2)(B) if such vehicle is delivered later than the promised delivery period (in this section referred to as a ''late delivery'').

(2) AMOUNT OF REFUND.—The amount of grant proceeds refunded to the Secretary under paragraph (1) for a late delivery shall be—

(A) greater than or equal to the difference between—

(i) the amount that was awarded for the promise to deliver the vehicle during a delivery period under subsection (e)(2)(B); and

(ii) the amount that would have been awarded for the delivery of such vehicle during the period in which it was in fact delivered; and

(B) less than or equal to 100 percent of the amount awarded for the delivery of such vehicle.

(g) AWARD AND REFUND CRITERIA.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall, in consultation with the Administrator, develop and publish the criteria for—

(1) awarding grants pursuant to the guidelines in subsection (e); and

(2) calculating the amount of grant proceeds required to be refunded under subsection (f) in connection with late deliveries.

(h) CONSULTATION.—The Secretary shall consult with manufacturers of heavy-duty diesel engines to determine the costs associated with the accelerated and increased production of such engines for field testing purposes.

(i) DISSEMINATION OF INFORMATION.—The Secretary shall—

(1) in consultation with the Administrator, determine whether and how to share information regarding the performance of heavy-duty diesel engines developed and tested under the grant program, including information regarding durability, maintenance, and fuel economy; and

(2) publish the rationale for such determination in the Federal Register.

(j) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) FIELD TESTING.—The term ''field testing'' means the testing prior to mass production of 2007 emissions standard-compliant heavy-duty vehicles by fleets in coordination with heavy-duty diesel engine manufacturers.

(3) HEAVY-DUTY DIESEL ENGINE.—The term ''heavy-duty diesel engine'' means a diesel engine used to power a truck that is operated on public streets, roads, or highways and has a gross vehicle weight rating in excess of 8,500 pounds.

(4) HEAVY-DUTY DIESEL ENGINE MANUFACTURER.—The term ''heavy-duty diesel engine manufacturer'' means, with respect to a heavy-duty diesel engine, the company of record holding the engine certification issued by the United States for the manufacture of such engine.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the grant program under this section.

Subtitle D—Advanced Clean Vehicle Demonstration Program

SEC. 741. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE FUELED VEHICLE.—The term ''alternative fueled vehicle'' means a vehicle propelled solely on an alternative fuel as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211), except the term does not include any vehicle that the Secretary determines, by rule, does not yield substantial environmental benefits over a vehicle operating solely on gasoline or diesel derived from fossil fuels.

(2) FUEL CELL VEHICLE.—The term ''fuel cell vehicle'' means a vehicle propelled by an electric motor powered by a fuel cell system that converts chemical energy into electricity by combining oxygen (from air) with hydrogen fuel that is stored on the vehicle or is produced onboard by reformation of a hydrocarbon fuel. Such a fuel cell system may, but is not required to, include the use of auxiliary energy storage systems to enhance vehicle performance.

(3) HYBRID VEHICLE.—The term ''hybrid vehicle'' means—

(A) a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

(i) an internal combustion or heat engine using combustible fuel; and

(ii) a rechargeable energy storage system; and

(B) any other vehicle that is defined as a hybrid vehicle in regulations prescribed by the Secretary of Energy for the administration of title III of the Energy Policy Act of 1992.

(4) NEIGHBORHOOD ELECTRIC VEHICLE.—The term ''neighborhood electric vehicle'' means a motor vehicle capable of traveling at speeds of 25 miles per hour that is—

(A) a low-speed vehicle, as such term is defined in section 571.3(b) of title 49, Code of Federal Regulations;

(B) a zero-emission vehicle, as such term is defined in section 86.1702–99 of title 40, Code of Federal Regulations; and

(C) otherwise lawful to use on local streets.

(5) PILOT PROGRAM.—The term ''pilot program'' means the competitive grant program established under section 742.

(6) STATE.—The term ''State'' includes the District of Columbia and the Commonwealth of Puerto Rico.

(7) ULTRA-LOW SULFUR DIESEL VEHICLE.—The term ''ultra-low sulfur diesel vehicle'' means a vehicle manufactured in model year 2002, 2003, 2004, 2005, or 2006 powered by a heavy-duty diesel engine that—

(A) is fueled by diesel fuel which contains sulfur at not more than 15 parts per million; and

(B) emits not more than the lesser of—

(i) for vehicles manufactured in—

(I) model years 2002 and 2003, 3.0 grams per brake horsepower-hour of oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(II) model years 2004 through 2006, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; or

(ii) the emissions of nonmethane hydrocarbons, oxides of nitrogen, and particulate matter of the best performing technology of ultra-low sulfur diesel vehicles of the same class and application that are commercially available.

SEC. 742. GRANT PILOT PROGRAM.

(a) REQUIREMENT FOR PROGRAM.—The Secretary of Energy shall establish a competitive grant pilot program to provide project grants to eligible recipients to carry out a project or projects for the purposes described in subsection (c).

(b) ELIGIBLE RECIPIENTS.—The following entities are eligible to receive a grant under the pilot program:

(1) A State government.

(2) The government of a political subdivision of a State.

(3) Any person other than an individual.

(4) Any combination of entities described in paragraphs (1), (2), and (3), acting together to carry out one or more projects for the purposes described in subsection (c).

(c) GRANT PURPOSES.—Grants under this section may be used for the following purposes:

(1) The acquisition of qualified alternative fueled vehicles or fuel cell vehicles for routine operation in service normal for motor vehicles, including (among other vehicles)—

(A) passenger vehicles, including neighborhood electric vehicles; and

(B) motorized two-wheel bicycles, scooters, or other vehicles for use by law enforcement personnel or other State or local government or metropolitan transportation authority employees.

(2) The acquisition of qualified alternative fueled vehicles, hybrid vehicles, or fuel cell vehicles for regular and routine operation in service normal for motor vehicles, including (among other vehicles)—

(A) buses used for public transportation or transportation to and from schools;

(B) delivery vehicles for goods or services;

(C) ground support vehicles at public airports, including vehicles to carry baggage or push airplanes away from terminal gates; and

(D) vehicles used for the collection of recyclable garbage or other garbage.

(3) The acquisition of ultra-low sulfur diesel vehicles for regular and routine operation in service normal for motor vehicles.

(4) Infrastructure necessary to directly support an alternative fueled vehicle, fuel cell vehicle, or hybrid vehicle project funded by the grant, including fueling and other support equipment.

(5) Operation and maintenance of vehicles, infrastructure, and equipment acquired as part of a project funded by the grant.

(d) QUALIFIED VEHICLES.—An alternative fueled vehicle, hybrid vehicle, or fuel cell vehicle is qualified for the purposes of subsection (c) if—

(1) in the case of a vehicle to which an emission standard applies under law, the emissions resulting from the operation of such vehicle are less than the applicable standard; or

(2) in the case of any gasoline-consuming motor vehicle, the fuel economy of such vehicle (as defined in section 32901(a) of title 49, United States Code) exceeds by at least 25 percent the average fuel economy standard applicable to the vehicle under chapter 329 of title 49, United States Code.

(e) APPLICATIONS.—

(1) REQUIREMENTS.—The Secretary shall prescribe the requirements for applying for grants under the pilot program. At a minimum, the Secretary shall require that applications include, for each project proposed in the application, the following:

(A) A description of the project, including how the project meets the requirements of this subtitle.

(B) An estimate of the ridership or degree of use of the project.

(C) An estimate of the air pollution emissions reduced and fossil fuel displaced as a result of the project, together with a plan to collect and disseminate environmental data, related to the project over the expected life of the project.

(D) A description of how the project is to be sustainable without Federal assistance after the completion of the term of the grant.

(E) A complete description of the costs of the project, including acquisition, construction, operation, and maintenance costs over the expected life of the project.

(F) A description of which costs of the project are to be supported by Federal assistance under this subtitle.

(G) In the case of a project involving diesel-fueled vehicles, documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the project, together with a commitment by the applicant to use such fuel in carrying out the project.

(2) PARTNERS.—An applicant under paragraph (1) may carry out any project under the pilot program in partnership with public and private entities.

(f) SELECTION CRITERIA.—In evaluating applications under the pilot program, the Secretary shall consider each applicant's previous experience with similar projects and shall give priority consideration to applications that—

(1) propose one or more projects that are most likely—

(A) to cost-effectively reduce vehicle operation emissions; and

(B) to cost-effectively reduce use of fossil fuel in the operation of vehicles;

(2) propose one or more projects that are—

(A) to be carried out or sponsored by a government referred to in paragraph (1) or (2) of subsection (b); or

(B) coordinated with such a government or with a metropolitan planning organization of such a government;

(3) demonstrate the greatest commitment on the part of the applicant or applicants to ensure funding for the proposed project or projects and the greatest likelihood that each project will be maintained or expanded after Federal assistance under this subtitle is completed; and

(4) exceed the minimum requirements of subsection (e)(1).

(g) PILOT PROJECT REQUIREMENTS.—

(1) MAXIMUM AMOUNT.—The Secretary shall not provide more than $20,000,000 in Federal assistance under the pilot program for any project.

(2) COST SHARING.—

(A) FEDERAL SHARE.—The Secretary shall not provide more than 50 percent of the cost, incurred during the period of the grant, of any project under the pilot program.

(B) APPLICANT SHARE.—The applicant or applicants for a grant for a project under the pilot program shall provide funding for the project in an amount that equals or exceeds the higher of the following amounts:

(i) $1,000,000.

(ii) The amount equal to 20 percent of the total cost of the project.

(3) MAXIMUM PERIOD OF GRANTS.—The Secretary shall not fund any applicant under the pilot program for more than 5 years.

(4) DEPLOYMENT AND DISTRIBUTION.—The Secretary shall seek to the maximum extent practicable to ensure—

(A) a broad geographic distribution of project sites under the pilot program; and

(B) the operation of vehicles acquired with the proceeds of pilot program grants under a variety of vehicle operating environments, including exposure to extreme weather conditions and operation of the vehicles in various modes of service under a variety of operational demands.

(5) TRANSFER OF INFORMATION AND KNOWLEDGE.—The Secretary shall establish mechanisms to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(h) SCHEDULE.—

(1) PUBLICATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall publish in the Federal Register, Commerce Business Daily, and elsewhere as appropriate, a solicitation of applications for grants for projects under the pilot program. Applications shall be due within 180 days after the publication of the first published notice.

(2) COMPETITIVE SELECTION.—Not later than 180 days after the date by which applications for grants are due, the Secretary shall select by competitive, peer review all applications for projects to be awarded a grant under the pilot program.

(h) FUNDING FOR ULTRA-LOW SULFUR DIESEL VEHICLES.—Of the total amount available for a fiscal year for grants under the pilot program, not less than 20 percent and not more than 25 percent of the grant funding shall be available only for the acquisition of ultra-low sulfur diesel vehicles.

SEC. 743. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary of Energy for carrying out this subtitle, $40,000,000 for each of fiscal years 2004, 2005, 2006, 2007, and 2008, to remain available until expended.

SA 1448. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.

(a) MODIFICATIONS TO LIGHT DUTY HYBRIDS.—

(1) INCREASE IN CREDIT AMOUNTS AFTER 2004.—

(A) IN GENERAL.—Section 30B(c)(2), as added by section 201(a), is amended—

(i) by striking clause (i) of subparagraph (A) and inserting the following new clause:

''(i) In the case of a new qualified hybrid motor vehicle which is a passenger automobile, medium duty passenger vehicle, or light truck and which provides the following percentage of the maximum available power:

''(I) If such vehicle is placed in service after the date of the enactment of this section and before January 1, 2005:

''If percentage of the maximum available power is:	**The credit amount is:**
At least 4 percent but less than 10 percent	$250
At least 10 percent but less than 20 percent	$500
At least 20 percent but less than 30 percent	$750
At least 30 percent	$1,000.

''(II) If such vehicle is placed in service after December 31, 2004:

''If percentage of the maximum available power is:	**The credit amount is:**
At least 4 percent but less than 10 percent	$350
At least 10 percent but less than 20 percent	$600
At least 20 percent but less than 30 percent	$850
At least 30 percent	$1,100.'',

(ii) by striking ''$500'' in subparagraph (B)(i)(I) and inserting ''$500 ($600 in the case of any vehicle placed in service after December 31, 2004)'',

(iii) by striking ''$1,000'' in subparagraph (B)(i)(II) and inserting ''$1,000 ($1,100 in the case of any vehicle placed in service after December 31, 2004)'',

(iv) by striking ''$1,500'' in subparagraph (B)(i)(III) and inserting ''$1,500 ($1,600 in the case of any vehicle placed in service after December 31, 2004)'',

(v) by striking ''$2,000'' in subparagraph (B)(i)(IV) and inserting ''$2,000 ($2,100 in the case of any vehicle placed in service after December 31, 2004)'',

(vi) by striking ''$2,500'' in subparagraph (B)(i)(V) and inserting ''$2,500 ($2,600 in the case of any vehicle placed in service after December 31, 2004)'', and

(vii) by striking ''$3,000'' in subparagraph (B)(i)(VI) and inserting ''$3,000 ($3,100 in the case of any vehicle placed in service after December 31, 2004)''.

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

(2) OPTION TO USE LIKE VEHICLE.—

(A) IN GENERAL.—Section 30B(c)(2), as added by section 201(a), is amended—

(i) by adding at the end of subparagraph (B) the following new clause:

''(iii) OPTION TO USE LIKE VEHICLE.—For purposes of clause (i), at the option of the vehicle manufacturer, the increase for fuel efficiency may be calculated by comparing the new qualified hybrid motor vehicle to a 'like vehicle'.'', and

(ii) by adding at the end of subparagraph (D) the following new clause:

''(iii) LIKE VEHICLE.—For purposes of subparagraph (B)(iii), the term 'like vehicle' for a new qualified hybrid motor vehicle derived from a conventional production vehicle produced in the same model year means a model that is equivalent in the following areas:

''(I) Body style (2-door or 4-door).

''(II) Transmission (automatic or manual).

''(III) Acceleration performance (± 0.05 seconds).

''(IV) Drivetrain (2-wheel drive or 4-wheel drive).

''(V) Certification by the Administrator of the Environmental Protection Agency.''.

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

(b) HYBRID VEHICLE CREDIT FOR LIFETIME FUEL SAVINGS.—

(1) IN GENERAL.—Section 30B(c)(2), as added by section 201(a) and amended by this section, is amended—

(A) by redesignating subparagraph (D) as subparagraph (E),

(B) by inserting after subparagraph (C) the following new subparagraph:

''(D) CONSERVATION CREDIT.—

''(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a passenger automobile, medium duty passenger vehicle, or light truck shall be increased by—

''(I) $350, if such vehicle achieves a lifetime fuel savings of at least 1,200 but less than 1,800 gallons of gasoline,

''(II) $600, if such vehicle achieves a lifetime fuel savings of at least 1,800 but less than 2,400 gallons of gasoline,

''(III) $850, if such vehicle achieves a lifetime fuel savings of at least 2,400 but less than 3,000 gallons of gasoline, and

''(IV) $1,100, if such vehicle achieves a lifetime fuel savings of at least 3,000 gallons of gasoline.

''(ii) LIFETIME FUEL SAVINGS FOR LIKE VEHICLE.—For purposes of clause (i), at the option of the vehicle manufacturer, the lifetime fuel savings fuel may be calculated by comparing the new qualified hybrid motor vehicle to a 'like vehicle'.'', and

(C) by adding at the end of subparagraph (E) (as redesignated by subparagraph (A)) the following new clause:

''(iv) LIFETIME FUEL SAVINGS.—For purposes of subparagraph (D), the term 'lifetime fuel savings' shall be calculated by dividing 120,000 by the difference between the 2002 model year city fuel economy for the vehicle inertia weight class (as defined in subsection (b)(2)(C)) and the city fuel economy for the new qualified hybrid motor vehicle.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

(c) CHANGE IN EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (h) of section 30B, as added by section 201(a), is amended to read as follows:

''(h) APPLICATION OF SECTION.—This section shall apply to——

''(1) any new qualified fuel cell motor vehicle (as described in subsection (b)) placed in service after December 31, 2004, and purchased before January 1, 2014,

''(2) any new qualified hybrid motor vehicle (as described in subsection (c)) placed in service after the date of the enactment of this section, and purchased before January 1, 2010, and

''(3) any other property placed in service after such date of enactment, and purchased before January 1, 2007.''.

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 30B(b)(3), as added by section 201(a), is amended to read as follows:

''(B) which, in the case of a passenger automobile or light truck for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

(d) CREDIT FOR ADVANCED LEAN BURN DIESEL TECHNOLOGY.—

(1) IN GENERAL.—Section 30B, as added by section 201(a) and amended by this section, is amended—

(A) by striking ''and'' at the end of subsection (a)(2),

(B) by striking the period at the end of subsection (a)(3) and inserting '', and'',

(C) by adding at the end of subsection (a) the following new paragraph:

''(4) the advanced lean burn technology motor vehicle credit determined under subsection (g).'', and

(D) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively, and by inserting after subsection (f) the following new subsection:

''(g) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the advanced lean burn technology motor vehicle credit determined under this subsection with respect to a new qualified advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

''(2) CREDIT AMOUNT.—

''(A) INCREASE FOR FUEL EFFICIENCY.—The credit amount determined under this paragraph shall be—

''(i) $350, if such vehicle achieves at least 125 percent but less than 150 percent of the 2002 model year city fuel economy,

''(ii) $600, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

''(iii) $850, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy, and

''(iv) $1,100, if such vehicle achieves at least 200 percent of the 2002 model year city fuel economy.

For purposes of clause (i), the 2002 model year city fuel economy with respect to a vehicle shall be determined using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

''(B) CONSERVATION CREDIT.—The amount determined under subparagraph (A) with respect to an advanced lean burn technology motor vehicle shall be increased by—

''(i) $350, if such vehicle achieves a lifetime fuel savings of at least 1,200 but less than 1,800 gallons of gasoline,

''(ii) $600, if such vehicle achieves a lifetime fuel savings of at least 1,800 but less than 2,400 gallons of gasoline,

''(iii) $850, if such vehicle achieves a lifetime fuel savings of at least 2,400 but less than 3,000 gallons of gasoline, and

''(iv) $1,100, if such vehicle achieves a lifetime fuel savings of at least 3,000 gallons of gasoline.

''(C) OPTION TO USE LIKE VEHICLE.—At the option of the vehicle manufacturer, the increase for fuel efficiency and conservation credit may be calculated by comparing the new advanced lean-burn technology motor vehicle to a like vehicle.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) NEW ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE.—The term 'new advanced lean burn technology motor vehicle' means a motor vehicle with an internal combustion engine—

''(i) which is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

''(ii) which incorporates direct injection,

''(iii) which achieves at least 125 percent of the 2002 model year city fuel economy,

''(iv) which, for 2005 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission levels for passenger vehicles established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, except any manufacturer may provide not to exceed 5,000 passenger vehicles per year which are Tier II compliant,

''(v) the original use of which commences with the taxpayer,

''(vi) which is acquired for use or lease by the taxpayer and not for resale, and

''(vii) which is made by a manufacturer.

''(B) LIKE VEHICLE.—The term 'like vehicle' for an advanced lean burn technology motor vehicle derived from a conventional production vehicle produced in the same model year means a model that is equivalent in the following areas:

''(i) Body style (2-door or 4-door),

''(ii) Transmission (automatic or manual),

''(iii) Acceleration performance (± 0.05 seconds).

''(iv) Drivetrain (2-wheel drive or 4-wheel drive).

''(v) Certification by the Administrator of the Environmental Protection Agency.

''(C) LIFETIME FUEL SAVINGS.—The term 'lifetime fuel savings' shall be calculated by dividing 120,000 by the difference between the 2002 model year city fuel economy for the vehicle inertia weight class (as defined in subsection (b)(2)(C)) and the city fuel economy for the new qualified hybrid motor vehicle.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. ___. CREDIT FOR CLEAN HEAVY-DUTY DIESEL VEHICLES.

(a) IN GENERAL.—Section 30B(a), as added by section 201(a) and amended by this Act, is amended—

(1) by striking ''and'' at the end of paragraph (3),

(2) by striking the period at the end of paragraph (4) and inserting '', and'',

(3) by adding at the end the following new paragraph:

''(5) the clean heavy-duty diesel motor vehicle credit determined under subsection (h).''.

(b) CLEAN HEAVY-DUTY DIESEL MOTOR VEHICLE CREDIT.—Section 30B, as added by section 201(a) and amended by this Act, is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

''(h) CLEAN HEAVY-DUTY DIESEL MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the clean heavy-duty diesel motor vehicle credit determined under this subsection with respect to a new clean heavy-duty diesel motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

''(2) CREDIT AMOUNT.—The credit amount determined under this paragraph shall be the sum of—

''(A) for any 2006 model vehicle, 50 percent of the incremental cost of such vehicle, if such vehicle meets the heavy-duty emission standards of 2007,plus

''(B) for any 2006 or later model vehicle, $2,500, if such vehicle meets the heavy-duty emission standards of 2010.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) NEW HEAVY-DUTY DIESEL MOTOR VEHICLE.—The term 'new heavy-duty diesel motor vehicle' means a motor vehicle with a diesel-fueled internal combustion engine—

''(i) which has a gross vehicle weight rating of at least 8,500 pounds,

''(ii) the original use of which commences with the taxpayer,

''(iii) which is acquired for use or lease by the taxpayer and not for resale, and

''(iv) which is made by a manufacturer.

''(B) INCREMENTAL COST.—The incremental cost of any new clean heavy-duty diesel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a motor vehicle of the same model described in subparagraph (A) without regard to clause (ii) thereof, to the extent such amount does not exceed $5,000.

''(C) HEAVY-DUTY EMISSION STANDARDS OF 2007.—The term 'heavy-duty emission standards of 2007' means the motor vehicle emission standards promulgated by the Administrator of the Environmental Protection Agency on January 18, 2001, under section 202 of the Clean Air Act to apply to heavy-duty vehicles of model years beginning with the 2007 vehicle model year.

''(D) HEAVY-DUTY EMISSION STANDARDS OF 2010.—The term 'heavy-duty emission standards of 2010' means the motor vehicle emission standards promulgated by the Administrator of the Environmental Protection Agency under section 202 of the Clean Air Act to apply to heavy-duty vehicles of model years beginning with the 2010 vehicle model year.

(d) CHANGE IN EFFECTIVE DATES.—Subsection (j) of section 30B, as redesignated by subsection (b), is amended to read as follows:

''(j) APPLICATION OF SECTION.—This section shall apply to——

''(1) any new qualified fuel cell motor vehicle (as described in subsection (b)) placed in service after December 31, 2004, and purchased before January 1, 2014,

''(2) any new qualified hybrid motor vehicle (as described in subsection (c)) placed in service after the date of the enactment of this section, and purchased before January 1, 2010, and

''(3) any new clean heavy-duty diesel motor vehicle (as described in subsection (h)) placed in service after December 31, 2005, and purchased before January 1, 2010, and

''(4) any other property placed in service after such date of enactment, and purchased before January 1, 2007.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2005, in taxable years ending after such date.

SEC. ___. CREDIT FOR PRODUCING LOW SULFUR CONTENT DIESEL FUEL.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to other credits), as amended by this Act, is amended by inserting after section 30C the following new section:

''SEC. 30D. CREDIT FOR PRODUCING CLEAN DIESEL FUEL.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to—

''(1) the applicable dollar amount, multiplied by

''(2) the barrel-of-oil equivalent of clean diesel fuel—

''(A) sold by the taxpayer to an unrelated person during the taxable year, and

''(B) the production of which is attributable to the taxpayer.

''(b) APPLICABLE DOLLAR AMOUNT.—For purposes of subsection (a)(1), the applicable dollar amount for fuel sold during the period—

''(1) beginning on the date which is 90 days after the date of the enactment of this section and ending before June 1, 2006, is $4.20, and

''(2) beginning after May 31, 2006, and ending before January 1, 2007, $2.10.

''(b) LIMITATIONS AND ADJUSTMENTS.—

''(1) CREDIT REDUCED FOR GRANTS, TAX-EXEMPT BONDS, AND SUBSIDIZED ENERGY FINANCING.—

''(A) IN GENERAL.—The amount of the credit allowable under subsection (a) with respect to any project for any taxable year shall be reduced by the amount which is the product of the amount so determined for such year and a fraction—

''(i) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

''(I) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

''(II) proceeds of any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and

''(III) the aggregate amount of subsidized energy financing (within the meaning of section 48(a)(6)(C)) provided in connection with the project, and

''(ii) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

''(B) AMOUNTS DETERMINED AT CLOSE OF YEAR.—The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

''(2) CREDIT REDUCED FOR ENHANCED OIL RECOVERY CREDIT AND ENVIRONMENTAL TAX CREDIT.—The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1) and (3)) shall be reduced by the excess (if any) of—

''(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 and any environmental tax credit determined under section 45L with respect to such project, over

''(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year.

''(3) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and this subpart (other than this section), over

''(B) the tentative minimum tax for the taxable year.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) CLEAN DIESEL FUEL.—The term 'clean diesel fuel' means motor vehicle diesel fuel which upon sale has a sulfur content as low as feasible, as determined by the Administrator of the Environmental Protection Agency taking into consideration costs, but not higher than 15 ppm.

''(2) ONLY PRODUCTION WITHIN THE UNITED STATES TAKEN INTO ACCOUNT.—Sales shall be taken into account under this section only with respect to diesel fuel the production of which is within—

''(A) the United States (within the meaning of section 638(1)), or

''(B) a possession of the United States (within the meaning of section 638(2)).

''(3) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

''(4) BARREL-OF-OIL EQUIVALENT.—The term 'barrel-of-oil equivalent' with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million.

''(5) BARREL DEFINED.—The term 'barrel' means 42 United States gallons.

''(6) RELATED PERSONS.—Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling clean diesel fuel to an unrelated person if such fuel is sold to such a person by another member of such group.

''(7) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply with respect to clean diesel fuel which is sold at retail after December 31, 2006.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 53(d)(1)(B)(iii), as amended by this Act, is amended by striking ''or'' and inserting before the period at the end the following: '', or under section 30D solely by reason of the application of section 30D(b)(3)''.

(2) Section 55(c)(2), as amended by this Act, is amended by inserting '', 30D(b)(3),'' after ''30(b)(2)''.

(3) Section 772 is amended—

(A) in subsection (a), by striking ''and'' at the end of paragraph (10), by redesignating paragraph (11) as paragraph (12), and by inserting after paragraph (10) the following new paragraph:

''(11) the credit allowable under section 30D, and'', and

(B) in subsection (d)(5), by striking ''and'', and by inserting before the period the following: '', and the credit allowable under section 30D''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30C the following new item:

''Sec. 30D. Credit for producing clean diesel fuel.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales on and after the date which is 90 days after the date of the enactment of this Act.

SEC. ___. PREVENTING CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) (defining domestic) is amended to read as follows:

''(4) DOMESTIC.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

''(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

''(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

''(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

''(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

''(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

''(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

''(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership or related foreign partnerships (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

''(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

''(v) SPECIAL RULES.—For purposes of this subparagraph—

''(I) a series of related transactions shall be treated as 1 transaction, and

''(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

''(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

''(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

''(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).

''(III) RELATED FOREIGN PARTNERSHIP.—A foreign partnership is related to a domestic partnership if they are under common control (within the meaning of section 482), or they shared the same trademark or tradename.''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to corporate expatriation transactions completed after September 11, 2001.

(2) SPECIAL RULE.—The amendment made by this section shall also apply to corporate expatriation transactions completed on or before September 11, 2001, but only with respect to taxable years of the acquiring corporation beginning after December 31, 2003.

SA 1449. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 202 and insert the following:

SEC. 202. PROJECT CRITERIA.

(a) IN GENERAL.—The Secretary shall not provide funding under this subtitle for any project that does not advance efficiency, environmental performance, and cost competitiveness beyond the level of technologies that are in operation or have been demonstrated as of the date of the enactment of this Act.

(b) TECHNICAL CRITERIA FOR GASIFICATION.—In allocating the funds made available under section 201, the Secretary shall ensure that at least 80 percent of the funds are used for coal-based gasification technologies, including projects that include gasification combined cycle, gasification fuel cells, gasification co-production, or hybrid gasification/combustion, and coal-based oxidation technologies that result in concentrated streams of carbon dioxide for capture and sequestration. The Secretary shall set technical milestones specifying emissions levels that coal gasification projects must be designed to and reasonably expected to achieve. The milestones shall get more restrictive through the life of the program. The milestones shall be designed to achieve by 2020 coal gasification projects able to—

(1) remove 99 percent of sulfur dioxide;

(2) emit no more than .05 lbs of NOx per million Btu;

(3) achieve substantial reductions in mercury emissions; and

(4) achieve a thermal efficiency of—

(A) 60 percent for coal of more than 9,000 Btu;

(B) 59 percent for coal of 7,000 to 9,000 Btu; and

(C) 57 percent for coal of less than 7,000 Btu.

(c) TECHNICAL CRITERIA FOR OTHER PROJECTS.—For projects not described in subsection (b), the Secretary shall set technical milestones specifying emissions levels that the projects must be designed to and reasonably expected to achieve. The milestones shall get more restrictive through the life of the program. The milestones shall be designed to achieve by 2010 projects able to—

(1) remove 97 percent of sulfur dioxide;

(2) emit no more than .08 lbs of NOx per million Btu;

(3) achieve substantial reductions in mercury emissions; and

(4) achieve a thermal efficiency of—

(A) 45 percent for coal of more than 9,000 Btu;

(B) 44 percent for coal of 7,000 to 9,000 Btu; and

(C) 42 percent for coal of less than 7,000 Btu.

(d) EXISTING UNITS.—In the case of projects at existing units, in lieu of the thermal efficiency requirements set forth in paragraphs (b)(4) and (c)(4), the projects shall be designed to achieve an overall thermal design efficiency improvement compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(e) CONSULTATION.—Before setting the technical milestones under subsections (b) and (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency and interested entities, including coal producers, industries using coal, organizations to promote coal or advanced coal technologies, environmental organizations, and organizations representing workers.

(f) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this title unless the recipient has documented to the satisfaction of the Secretary that—

(1) the award recipient has an adequate financial plan for carrying out the project;

(2) the recipient will provide sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively; and

(3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from potential purchasers of the technology.

(g) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects that meet the requirements of this section and are likely to—

(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy while complying with environmental standards;

(2) improve the competitiveness of coal among various forms of energy; and

(3) demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities that use coal as the primary feedstock as of the date of the enactment of this Act.

(h) FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share of the cost of a coal or related technology project funded by the Secretary shall not exceed 50 percent.

(2) REPAYMENT TERMS.—The Secretary shall not require repayment for the Federal share of the cost of a coal or related technology project selected under this section.

(i) APPLICABILITY.—No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act, achievable for purposes of section 169 of that Act, or achievable in practice for purposes of section 171 of that Act solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under this title.

SA 1450. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 973. WESTERN HEMISPHERE ENERGY COOPERATION.

(a) DEFINITION OF SECRETARY.—In this section, the term ''Secretary'' means the Secretary of Energy.

(b) PROGRAM.—The Secretary shall carry out a program to promote cooperation on energy issues with Western Hemisphere countries.

(c) ACTIVITIES.—Under the program, the Secretary shall fund activities to work with Western Hemisphere countries to—

(1) assist the countries in formulating and adopting changes in economic policies and other policies to—

(A) increase the production of energy supplies; and

(B) improve energy efficiency; and

(2) assist in the development and transfer of energy supply and efficiency technologies that would have a beneficial impact on world energy markets.

(d) UNIVERSITY PARTICIPATION.—To the extent practicable, the Secretary shall carry out the program with the participation of universities so as to take advantage of the acceptance of universities by Western Hemisphere countries as sources of unbiased technical and policy expertise when assisting the Secretary in—

(1) evaluating new technologies;

(2) resolving technical issues; and

(3) working with those countries in the development of new policies; and

(4) training policymakers, particularly in the case of universities that involve the participation of minority students, such as Hispanic-serving institutions and Historically Black Colleges and Universities.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $8,000,000 for fiscal year 2004;

(2) $10,000,000 for fiscal year 2005;

(3) $13,000,000 for fiscal year 2006;

(4) $16,000,000 for fiscal year 2007; and

(5) $19,000,000 for fiscal year 2008.

SA 1451. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 308 ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

At the appropriate place, insert the following to paragraph (5)(A)(iv), after ''capacities'' and before the parenthesis:

or 45% in the case of a system which uses biomass, as defined in section 45(c)(3)(A)(III), as the principal fuel.

On page 134, between lines 12 and 13, insert the following at the end of (5)(A)(v) the following:

(vi) Coordination with Section 38(b)(8)—No credit shall be allowed under section 38(b)(1) (investment credit) because such property qualifies as combined heat and power system property under this paragraph.

SA 1452. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title III of division B add the following:

SEC. 310. EXPANSION OF CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY TO INCLUDE ELECTRIC THERMAL STORAGE UNIT.

(a) IN GENERAL.—Section 25C(b)(1)(C) (relating to maximum credit), as added by this Act, is amended—

(1) by striking ''and'' at the end of clause (v),

(2) by striking the period at the end of clause (vi) and inserting '', and'', and

(3) by adding at the end the following new clause:

''(vii) $250 for each electric thermal storage unit.''.

(b) ELECTRIC THERMAL STORAGE UNIT.—Section 25C(d)(6)(B), as added by this Act, is amended—

(1) by striking ''and'' at the end of clause (v),

(2) by striking the period at the end of clause (vi) and inserting '', and'', and

(3) by adding at the end the following new clause:

''(vii) an electric thermal storage unit which converts low-cost, off-peak electricity to heat and stores such heat for later use in specially designed ceramic bricks.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures after the date of the enactment of this Act, in taxable years ending after such date.

SA 1453. MR. DORGAN submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

In division B, beginning on page 7, line 24, strike all through page 8, line 3, and insert the following:

''(1) WIND FACILITY.—

''(A) IN GENERAL.—In the case of a facility using wind to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2009.

''(B) SPECIAL RULE.—In the case of electricity produced after 2003 at any facility described in subparagraph (A) which is placed in service after the date of the enactment of the Energy Tax Incentives Act of 2003, subsection (a)(1) shall be applied by substituting '1.8 cents' for '1.5 cents'.

On page 14, line 15, insert ''(other than subsection (d)(1)(B))'' after ''section''.

SA 1454. Mr. LANDRIEU submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 932 and insert the following:

SEC. 932. BIOENERGY PROGRAM.

(a) DEFINITION.—In this section, the term ''cellulosic biomass'' means any portion of a crop containing lignocellulose or hemicellulose or any crop grown specifically for the purpose of producing cellulosic feedstocks.

(b) PROGRAM.—The Secretary shall conduct a program of research, development, demonstration, and commercial application for bioenergy, including—

(1) biopower energy systems;

(2) biofuels;

(3) bio-based products;

(4) integrated biorefineries that may produce biopower, biofuels, and bio-based products;

(5) cross-cutting research and development in feedstocks and enzymes; and

(6) economic analysis.

(c) BIOFUELS AND BIO-BASED PRODUCTS.—The goals of the biofuels and bio-based products programs shall be to develop, in partnership with industry—

(1) advanced biochemical and thermochemical conversion technologies capable of making biofuels and biobased products from a variety of feedstocks, including grains, cellulosic biomass, and other agricultural byproducts, that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell-powered vehicles; and

(2) advanced biotechnology processes capable of making biofuels and bio-based products with emphasis on development of biorefinery technologies using enzyme-based processing systems.

SA 1455. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, after line 22, add the following:

SEC. 115. EXTENSION OF DEEPWATER PORT ACT OF 1974 TO NATURAL GAS LIQUIDS, LIQUEFIED PETROLEUM GASES, AND CONDENSATES RECOVERED FROM NATURAL GAS.

Section 3(13) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(13)) is amended—

(1) by striking ''including compressed'' and inserting ''including—

''(A) compressed''; and

(2) by adding at the end the following:

''(B) natural gas liquid, liquefied petroleum gas, and condensate recovered from natural gas;''.

SA 1456. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 467, after line 16, add the following:

TITLE ___—MISCELLANEOUS

SEC. ___. DEEPWATER PORT LICENSING.

Section 6 of the Deepwater Port Act of 1974 (33 U.S.C. 1505) is amended by adding at the end the following:

''(d) RELIANCE ON ACTIVITIES OF OTHER AGENCIES.—In fulfilling the requirements of section 5(f)—

''(1) to the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may use the information derived from those activities in lieu of directly conducting such activities; and

''(2) the Secretary may use information obtained from any State or local government or from any person.''

SA 1457. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 467, after line 16, add the following:

TITLE ___—MISCELLANEOUS

SEC. ___. DEEPWATER PORT LICENSING.

Section 6 of the Deepwater Port Act of 1974 (33 U.S.C. 1505) is amended by adding at the end the following:

''(d) RELIANCE ON ACTIVITIES OF OTHER AGENCIES.—In fulfilling the requirements of section 5(f)—

''(1) to the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may use the information derived from those activities in lieu of directly conducting such activities; and

''(2) the Secretary may use information obtained from any State or local government or from any person.''

SA 1458. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1182 and insert the following:

SEC. ___. MARKET-BASED RATES.

(a) APPROVAL OF MARKET-BASED RATES.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(h) MARKET-BASED RATES.—

''(1) IN GENERAL.—In determining whether to grant a public utility authority to sell wholesale electric energy at a market-based rate, the Commission shall consider—

''(A) whether the seller and affiliates of the seller have, or have adequately mitigated, market power in the generation and transmission of electric energy;

''(B) whether the sale is made in an effectively competitive market;

''(C) whether market mechanisms function adequately;

''(D) the adequacy of reserve margins; and

''(E) such other matters as the Commission considers to be appropriate and in the public interest.

''(2) ANNUAL REVIEW.—

''(A) IN GENERAL.—For each public utility granted the authority by the Commission to sell wholesale electric energy at a market-based rate, the Commission shall review, at least annually, the characteristics of each market in which the public utility is authorized to sell wholesale electric energy at a market-based rate to determine whether sales by the public utility in that market are subject to effective competition.

''(B) CORRECTIVE ACTION.—If, in a review under subparagraph (A), the Commission determines that effective competition does not exist, the Commission shall take appropriate corrective action.''.

(b) REVIEW OF MARKET-BASED RATES.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

''(f) MARKET-BASED RULES.—If the Commission, after a hearing on its own motion or on complaint, finds that a rate charged by a public utility authorized to charge a market-based rate under section 205 is unjust, unreasonable, or unduly discriminatory or preferential, the Commission shall—

''(1) determine the just and reasonable rate and fix the rate by order in accordance with this section; or

''(2) order such other action as will, in the judgment of the Commission, ensure a just and reasonable market-based rate.''.

SA 1459. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1172 and insert the following:

SEC. 1172. MARKET MANIPULATION.

(a) PROHIBITION.—Part II of the Federal Power Act (as amended by section 1171) is amended by adding at the end the following:

''SEC. 219. PROHIBITION ON MARKET MANIPULATION.

''It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers.''.

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after ''not just and reasonable'' the following: ''or that result from a manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219''.

(c) ADDITIONAL REMEDY FOR MARKET MANIPULATION.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

''(e) REMEDY FOR MARKET MANIPULATION.—If the Commission finds that a public utility has knowingly employed any manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219, the Commission shall, in addition to any other remedy available under this Act, revoke the authority of the public utility to charge market-based rates.''.

SA 1460. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1182 and insert the following:

SEC. ___. PROHIBITION OF MARKET-BASED RATES.

Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by adding at the end the following: ''Nothing in this Act confers on the Commission authority to authorize market-based rates for the sale of electric energy at wholesale.''.

SA 1461. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

In section 216 of the Federal Power Act (as added by section 1131), strike subsection (f).

In section 218 of the Federal Power Act (as added by section 1171), strike the second sentence of subsection (b).

SA 1462. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G, add the following:

SEC. 11___. RELIEF FOR RATEPAYERS.

Any contract for the sale of electric energy at wholesale that contains rates, terms, or conditions affected by any manipulative, deceptive, or fraudulent activity by a party to the contract shall be unenforceable.

SA 1463. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1132.

SA 1464. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G, add the following:

SEC. 11___. RELIEF FOR WESTERN RATEPAYERS.

Any contract for the sale of electric energy at wholesale within the Western Systems Coordinating Council region that was executed by Enron Corporation, Enron Power Marketing Incorporated, Enron Energy Services Incorporated, Enron North America, or the Enron Group during the period of December 25, 2000, through June 20, 2001, shall, for the purposes of section 206 of the Federal Power Act (16 U.S.C. 824e), be considered to be unjust and unreasonable and not in the public interest.

SA 1465. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—MISCELLANEOUS

SEC. ___. PROHIBITION OF LOBBYING FOR NOMINATIONS TO THE FEDERAL ENERGY REGULATORY COMMISSION.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

''SEC. 33. PROHIBITION OF LOBBYING FOR NOMINATIONS TO THE FEDERAL ENERGY REGULATORY COMMISSION.

''It shall be unlawful for any person that is an officer or employee of, or has any financial relationship to, a licensee under this Act or of any person, firm, association, municipality, or corporation engaged in the generation, transmission, distribution, or sale of natural gas or electric power, to communicate with any officer or employee of the executive or legislative branch of the Federal Government with the intent of advancing—

''(1) the candidacy of a specific individual to be nominated by the President to be a member of the Commission; or

''(2) the confirmation by the Senate of such a nomination.''.

SA 1466. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—MISCELLANEOUS

SEC. ___. FERC RULES REGARDING EX PARTE COMMUNICATIONS.

(a) EXISTING RULE.—Section 385.2201 of title 18, United States Code, is vacated.

(b) STANDARDS OF CONDUCT.—Part I of the Federal Power Act is amended by inserting after the first section (16 U.S.C. 792) the following:

''SEC. 1A. STANDARDS OF CONDUCT.

''(a) EX PARTE COMMUNICATIONS.—Unless required for the disposition of ex parte matters authorized by law, members of the commission or administrative law judges assigned to render a decisions or to make findings of fact and conclusions of law in a contested case may not communicate, directly

or indirectly, in connection with any issue of law or fact with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. Members of the commission or administrative law judges assigned to render a decision or to make findings of fact or conclusions of law in a contested case may communicate ex parte with employees of the commission who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence.

''(b) STANDARDS FOR RECUSAL OF COMMISSIONERS.—A commissioner shall recuse himself or herself from sitting in a proceeding, or from deciding one or more issues in a proceeding, in which any one or more of the following circumstances exist:

''(1) the commissioner in fact lacks impartiality, or the commissioner's impartiality has been reasonably questioned;

''(2) the commissioner, or any relative of the commissioner, is a party or has a financial interest in the subject matter of the issue or in one of the parties, or the commissioner has any other interest that could be substantially affected by the determination of the issue; or

''(3) the commissioner or a relative of the commissioner has participated as counsel, advisor, or witness in the proceeding or matter in controversy.

''(c) MOTIONS FOR DISQUALIFICATION OR RECUSAL OF A COMMISSIONER.—

''(1) Any party may move for disqualification or recusal of a commissioner stating with particularity grounds why the commissioner should not sit. Such a motion must be filed prior to the date the commission is scheduled to consider the matter unless the information upon which the motion is based was not known or discoverable with reasonable effort prior to that time. The grounds may include any disability or matter not limited to those set forth in subsection (d) of this section. The motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.

''(2) Subject to the provisions of paragraph (1) of this subsection the motion shall be filed within 10 working days after the facts that are the basis of the motion become know to the party or within 15 days of the commencement of the proceeding, whichever is later. The motion shall be served on all parties by hand delivery, facsimile transmission, or overnight courier delivery.

''(3) Parties may file written responses to the motion within 7 working days from the date of filing the motion. The commission may require that responses be made orally at an open meeting.

''(4) The commissioner sought to be disqualified shall issue a decision as to whether he or she agrees that recusal or disqualification is appropriate or required before the commission is scheduled to act on the matter for which recusal is sought, or within 15 days after filing of the motion, whichever occurs first.

''(5) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.

''(6) Recusal or disqualification of a commission in and of itself has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.''

SA 1467. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table, as follows:

At the end of subtitle B of Title VII, add the following:

''SEC. 7___. AVIATION EFFICIENCY.

''(a) ESTABLISHMENT.—The Secretary of Energy, in cooperation with the Administrator of the National Aeronautics and Space Administration, Administrator of the Environmental Protection Agency and, where applicable, the Secretary of Defense, shall establish a cost-shared public-private research partnership to develop and demonstrate aviation-related technologies, including fuel cell technology, that increase fuel efficiency, reduce emissions and lower costs of operation. Such partnership shall involve the Federal Government, commercial airlines, universities, and aviation manufacturers and equipment suppliers.

''(b) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $50,000,000 for fiscal year 2004, $70,000,000 for fiscal year 2005, and $100,000,000 for fiscal year 2006.''

SA 1468. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At an appropriate place in the bill, add the following:

''SEC. . COST RECOVERY FOR QUALIFIED ENERGY MANAGEMENT DEVICES AND QUALIFIED ENERGY MANAGEMENT SOFTWARE.

(a) QUALIFIED ENERGY MANAGEMENT DEVICE DEFINED AS 3-YEAR PROPERTY.—Section 168(e)(3)(A) (defining 3-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) any qualified energy management device.

Nothing in any other provision of this title shall be construed to treat property as not being described in clause (iv) by reason of its use in connection with public utility property (within the meaning of subsection (i)(9)).''.

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules) is amended by inserting at the end the following new paragraph:

''(15) QUALIFIED ENERGY MANAGEMENT DEVICE—

''(A) IN GENERAL.—The term ''qualified energy management device'' means any energy management device which is placed in service before January 1, 2008, by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

''(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term ''energy management device'' means any meter or metering device which is used by the taxpayer—

''(i) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.''.

(c) EXPENSING OF QUALIFIED ENERGY MANAGEMENT SOFTWARE.—

Section 167 is amended by redesignating subsection (h) as subsection (i) and adding the following new subsection:

''(h) TREATMENT OF QUALIFIED ENERGY MANAGEMENT SOFTWARE.—

''(1) IN GENERAL.—There shall be allowed as a deduction an amount equal to the cost of qualified energy management software placed in service during the taxable year and before January 1, 2008.

''(2) QUALIFIED ENERGY MANAGEMENT SOFTWARE.—For purposes of this subsection, qualified energy management software is computer software (as described in subsection (f)(1)(B)) for which a depreciation deduction would be allowable (but for this subsection) under subsection (a), and which is used by the taxpayer primarily—

''(i) to collect electricity usage data from one or more qualified energy management devices (as defined in section 168(i)(15)),

''(ii) to present or display to the consumer electricity usage data collected by such devices, or

''(iii) to manage or control a consumer's electricity load.

''(3) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the amount of the deduction with respect to such property which is allowed by paragraph (1).

''(4) CERTAIN REGULATED COMPANIES—This subsection shall not apply to any qualified energy management software that is public utility property (within the meaning of section 168(i)(10)) if the taxpayer does not use a normalization method of accounting (within the meaning of section 168(i)(9)).''

(d) CONFORMING AMENDMENTS—

(1) Section 263(a)(1) is amended by striking 'or' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ', or', and by inserting after subparagraph (H) the following new subparagraph:

''(i) expenditures for which a deduction is allowed under section 167(h)(1).''.

(2) Section 1016(a) is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by inserting after paragraph (28) the following new paragraph:

''(29) to the extent provided in section 167(h)(1).''

(3) Section 1245(a) is amended by inserting ''167(h)(1),'' before ''179,'' both places it appears in paragraphs (2)(C) and (3)(C).

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.''

SA 1469. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At an appropriate place in the bill, add the following:

SEC. . DEFINITIONS.

In this Act:

(1) ELIGIBLE UTILITY.—The term 'eligible utility' means an electric utility that, during any 12-month period beginning on or after January 1, 2000, increased or increases the rates charged to all categories of its customers by a weighted average of 20 percent or more in order to cover increases in the cost of generating or acquiring electricity.

(2) ENERGY PRODUCTIVITY PROJECT.—The term 'energy productivity project' means a project to.—

(A) construct a facility or install equipment that uses energy-efficient technology in the generation or use of electric energy; or

(B) conduct a program, not conducted by the applicant for a grant under section 4 before the date of application for the grant, to increase the productivity of a utility.

(3) FUND.—The term 'Fund' means the ''Savings Through Energy Productivity (STEP) Fund'' established by section 4.

(4) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

(5) UTILITY.—The term 'utility' means an electric utility (as defined in section 3 of the Federal Power Act (16 U.S.C. 796)) that is subject to regulation by a State commission (as defined in that section).

SEC. . IMMEDIATE ELECTRIC ENERGY COST RELIEF FOR CONSUMERS THAT REDUCE ENERGY CONSUMPTION.

(a) IN GENERAL.—The Secretary shall establish a program, to be known as the 'STEP Emergency Rebate Program', under which the Secretary makes grants to eligible utilities to pay the costs of providing rebates or credits against the amounts of electric bills of customers that reduce the amount of electric energy consumed by the customer.

(b) CREDITS FOR REDUCTION OF ELECTRIC ENERGY CONSUMPTION.—

(1) IN GENERAL.—To receive a grant under subsection (a), an eligible utility shall agree to provide its customers rebates and credits as provided in this subsection.

(2) FIRST PERIOD OF QUALIFICATION.—During the first 12-month period in which a utility customer qualifies for rebates or credits under this section, the customer shall be entitled to a rebate of a portion of the amount of an electric bill paid, or a credit against the amount of an electric bill, for each billing period, in an amount that is proportionate to the percentage by which the amount of electric energy consumed by the customer during the billing period is less than the amount consumed during the equivalent billing period in the preceding year (referred to in this section as the 'base billing period').

(3) SECOND PERIOD OF QUALIFICATION.—During the second 12-month period in which a utility customer qualifies for rebates or credits under this section, the customer shall be entitled to a rebate of a portion of the amount of an electric bill paid, or a credit against the amount of an electric bill, for each billing period, in an amount that is proportionate to the percentage by which the amount of electric energy consumed by the customer during the billing period is less than the amount consumed during the base billing period.

(4) NEW CUSTOMERS.—In the case of a customer to which an eligible utility has sold electric energy for less than a year, the proportion by which the customer shall be considered to have reduced electric energy consumption during a month shall be determined by comparing the amount of electric energy consumed by the customer during the month against a local area baseline determined in accordance with regulations promulgated by the Secretary.

(5) PERCENTAGE REDUCTION.—

(A) LIMITATION.—A utility customer shall be entitled to a rebate or credit only to the extent that the percentage described in paragraph (3) or (4) is between 5.0 percent and 20.0 percent, inclusive.

(B) ROUNDING.—For the purposes of determining the amount of a rebate or credit, a described in paragraph (3) or (4) shall be rounded to the nearest tenth of a percent.

(c) ACTION BY THE SECRETARY.—

(1) EXPEDITIOUS RELIEF.—In order to provide energy cost relief to consumers as expeditiously as possible, the Secretary shall act on an application for a grant under subsection (a) within 30 days after receiving the application.

(2) FAILURE TO ACT.—If the Secretary fails to act on an application for a grant within 30 days after receiving the application, the application shall be deemed to be granted.

(3) DENIAL OF APPLICATION.—If the Secretary denies an application, the Secretary shall include in the denial.—

(A) a detailed statement of the reasons for the denial; and

(B) a description any action that the applicant may make to obtain approval of the application.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this section for fiscal years 2004 and 2005.

(2) ADMINISTRATIVE EXPENSES.—The Secretary shall use not more than 5 percent of the amount made available to carry out this section for a fiscal year to pay administrative expenses.

(e) CESSATION OF EFFECTIVENESS.—

(1) IN GENERAL.—This section ceases to be in effect on October 1, 2005.

(2) TRANSFER TO THE FUND.—Any balance of the amounts made available to carry out this section that remain unexpended on September 30, 2005, shall be transferred to the Fund.

SEC. 4. STEP FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund to be known as the 'STEP Fund', consisting of.—

(1) amounts appropriated to the Fund under subsection (f);

(2) amounts of loans repaid to the Fund under subsection (b)(2)(B);

(3) amounts of interest earned on investment of amounts in the Fund under subsection (c); and

(4) amounts transferred to the Fund under section 3(e)(2).

(b) LOAN PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a program under which the Secretary, using amounts in the Fund, makes loans to utilities and nonprofit organizations, at no interest, to pay up to 100 percent of the cost of an energy productivity project.

(2) REPAYMENT.—

(A) SCHEDULE.—The Secretary shall require repayment of a loan on a schedule that takes into account the length of time that will be required for the amount of savings that is expected to be realized from an energy productivity project to equal the cost of the energy productivity project.

(B) DEPOSIT IN FUND.—The Secretary shall deposit amounts received in repayment of a loan in the Fund.

(c) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired.—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(4) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(d) AVAILABILITY.—Amounts in the Fund shall be available to the Secretary, without further appropriation, to make loans under subsection (b).

(e) REPORTS.—Not later than 1 year after the date on which a utility or nonprofit organization receives a loan under this section, and annually thereafter until such date as the loan is repaid in full, the loan recipient shall submit to the Secretary of Energy a report that describes—

(1) any electricity savings or peak demand reductions resulting from the implementation of activities carried out using loan funds; and

(2) an estimate of the annual cost-effectiveness of all programs carried out by the loan recipient in the year for which the report is submitted.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such sums as are necessary to carry out this section.

(g) CESSATION OF EFFECTIVENESS.—This section ceases to be in effect on the date that is 10 years after the date of enactment of this Act.

SA 1470. Ms. CANTWELL (for herself and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of Title VII, add the following:

SEC. 7_. MOTOR VEHICLE TIRES SUPPORTING MAXIMUM FUEL EFFICIENCY.

(a) STANDARDS FOR TIRES MANUFACTURED FOR INTERSTATE COMMERCE.—Section 30123 of title 49, United States Code, is amended—

(1) in subsection (b), by inserting after the first sentence the following: ''The grading system shall include standards for rating the fuel efficiency of tires designed for use on passenger cars and light trucks.''; and

(2) by adding at the end the following:

''(d) NATIONAL TIRE FUEL EFFICIENCY PROGRAM.—(1) The Secretary shall develop and carry out a national tire fuel efficiency program for tires designed for use on passenger cars and light trucks.

''(2) The program shall include the following:

''(A) Policies and procedures for testing and labeling tires for fuel economy to enable tire buyers to make informed purchasing decisions about the fuel economy of tires.

''(B) Policies and procedures to promote the purchase of energy-efficient replacement tires, including purchase incentives, website listings on the Internet, printed fuel economy guide booklets, and mandatory requirements for tire retailers to provide tire buyers with fuel-efficiency information on tires.

''(C) Minimum fuel economy standards for tires, promulgated by the Secretary.

''(3) The minimum fuel economy standards for tires shall—

''(A) ensure that the fuel economy of replacement tires is equal to or better than the average fuel economy of tires sold as original equipment;

''(B) secure the maximum technically feasible and cost-effective fuel savings;

''(C) not adversely affect tire safety;

''(D) not adversely affect the average tire life of replacement tires;

''(E) incorporate the results from—

''(i) laboratory testing; and

''(ii) to the extent appropriate and available, on-road fleet testing programs conducted by the manufacturers; and

''(F) not adversely affect efforts to manage scrap tires.

''(4) The policies, procedures, and standards developed under paragraph (2) shall apply to all types and models of tires that are covered by the uniform tire quality grading standards under section 575.104 of title 49, Code 16 of Federal Regulations (or any successor regulation).

''(5) Not less often than every three years, the Secretary shall review the minimum fuel economy standards in effect for tires under this subsection and revise the standards as necessary to ensure compliance with requirements under paragraph (3). The Secretary

may not, however, reduce the average fuel economy standards applicable to replacement tires.

''(6) Nothing in this chapter shall be construed to preempt any provision of State law relating to higher fuel economy standards applicable to replacement tires designed for use on passenger cars and light trucks.

''(7) Nothing in this chapter shall apply to—

''(A) a tire or group of tires with the same SKU, plant, and year, for which the volume of tires produced or imported is less than 15,000 annually;

''(B) a deep tread, winter-type snow tire, spacesaver tire, or temporary use spare tire;

''(C) a tire with a normal rim diameter of 12 inches or less;

''(D) a motorcycle tire; or

''(E) a tire manufactured specifically for use in an off-road motorized recreational vehicle.

''(8) In this subsection, the term 'fuel economy', with respect to tires, means the extent to which the tires contribute to the fuel economy of the motor vehicles on which the tires are mounted.

(b) CONFORMING AMENDMENT.—Section 30103(b) of title 49, United States Code, is amended in paragraph (1) by striking ''When'' and inserting ''Except as provided in section 30123(d) of this title, when''.

(c) TIME FOR IMPLEMENTATION.—The Secretary of Transportation shall ensure that the national tire fuel efficiency program required under subsection (d) of section 30123 of title 49, United States Code (as added by subsection (a)(2)), is administered so as to apply the policies, procedures, and standards developed under paragraph (2) of such subsection (d) beginning not later than March 31, 2006.

SA 1471. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1141 and insert the following:

SEC. 1141. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(11) NET METERING.—

''(A) IN GENERAL.—On the request of any electric consumer served by an electric utility, the electric utility shall make available to the electric consumer net metering as provided in section 115(i).

''(B) CONSIDERATION BY STATE REGULATORY AUTHORITIES.—Notwithstanding subsections (b) and (c) of section 112, not later than 1 year after the date of enactment of this paragraph, a State regulatory authority may consider and make a determination concerning whether it is in the public interest to decline to implement subparagraph (A) in the State.

''(C) INCENTIVES.—Nothing in this paragraph precludes a State from establishing incentives to encourage on-site generating facilities and net metering in addition to the requirement under this subsection.

''(D) REPORTS.—Not later than 1 year after the date of enactment of this paragraph and annually thereafter, the Secretary shall submit to Congress a report that—

''(i) describes the status of implementation by the States of subparagraph (A);

''(ii) contains a list of pre-approved systems and equipment eligible for uniform interconnection treatment; and

''(iii) describes the public benefits that have been derived from net metering and interconnection standards.''.

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

''(i) NET METERING.—

''(1) DEFINITIONS.—In this subsection:

''(A) ELIGIBLE ON-SITE GENERATING FACILITY.—The term 'eligible on-site generating facility' means—

''(i) a facility on the site of a residential electric consumer with a maximum generating capacity of 25 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; and

''(ii) a facility on the site of a commercial electric consumer with a maximum generating capacity of 1000 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high-efficiency system.

''(B) HIGH EFFICIENCY SYSTEM.—The term 'high efficiency system' means a system that is comprised of—

''(i) fuel cells; or

''(ii) combined heat and power.

''(C) NET METERING SERVICE.—The term 'net metering service' means service to an electric consumer, as provided in section 111(d)(11), under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

''(D) RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means solar, wind, biomass, micro-freeflow-hydro, or geothermal energy.

''(2) NET METERING SERVICE.—For the purposes of undertaking the consideration and making the determination with respect to the standard concerning net metering established by section 111(d)(11), the term 'net metering service' means a service provided in accordance with this subsection.

''(3) CHARGES BY AN ELECTRIC UTILITY.—An electric utility—

''(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

''(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

''(4) MEASUREMENT OF QUANTITIES.—An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period with a single bi-directional meter or otherwise in accordance with reasonable metering practices.

''(5) QUANTITY SOLD IN EXCESS OF QUANTITY SUPPLIED.—If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with reasonable metering practices.

''(6) QUANTITY SUPPLIED IN EXCESS OF QUANTITY SOLD.—If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

''(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (5); and

''(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period with—

''(i) a kilowatt-hour credit appearing on the bill for the following billing period; or

''(ii) a cash refund.

''(7) COMPLIANCE WITH STANDARDS.—An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

''(8) REQUIREMENTS.— The Commission, after consideration of all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories, and consultation with State regulatory authorities and unregulated electric utilities, and after notice and opportunity for comment, shall promulgate additional control, testing, and interconnection requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.''.

SA 1472. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike subtitle F of Title IX and insert the following:

SEC. 961. SCIENCE.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for research, development, demonstration, and commercial application activities of the Office of Science, including activities authorized under this subtitle, including the amounts authorized under the amendment made by section 967(c)(2)(D), and including basic energy sciences, advanced scientific and computing research, biological and environmental research, fusion energy sciences, high energy physics, nuclear physics, and research analysis and infrastructure support—

(1) for fiscal year 2004, $3,785,000,000;
(2) for fiscal year 2005, $4,153,000,000;
(3) for fiscal year 2006, $4,586,000,000;
(4) for fiscal year 2007, $5,000,000,000; and
(5) for fiscal year 2008, $5,400,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities of the Fusion Energy Sciences Program, including activities under section 962—

(A) for fiscal year 2004, $335,000,000;
(B) for fiscal year 2005, $349,000,000;
(C) for fiscal year 2006, $362,000,000;
(D) for fiscal year 2007, $377,000,000; and
(E) for fiscal year 2008, $393,000,000.

(2) For the Spallation Neutron Source—

(A) for construction in fiscal year 2004, $124,600,000;

(B) for construction in fiscal year 2005, $79,800,000;

(C) for completion of construction in fiscal year 2006, $41,100,000; and

(D) for other project costs (including research and development necessary to complete the project, preoperations costs, and capital equipment related to construction), $103,279,000 for the period encompassing fiscal years 2003 through 2006, to remain available until expended through September 30, 2006.

(3) For Catalysis Research activities under section 965—
(A) for fiscal year 2004, $33,000,000;
(B) for fiscal year 2005, $35,000,000;
(C) for fiscal year 2006, $36,500,000;
(D) for fiscal year 2007, $38,200,000; and
(E) for fiscal year 2008, $40,100,000.
(4) For Nanoscale Science and Engineering Research activities under section 966—
(A) for fiscal year 2004, $270,000,000;
(B) for fiscal year 2005, $290,000,000;
(C) for fiscal year 2006, $310,000,000;
(D) for fiscal year 2007, $330,000,000; and
(E) for fiscal year 2008, $375,000,000.
(5) For activities under subsection 966(c), from the amounts authorized under subparagraph (4)—
(A) for fiscal year 2004, $135,000,000;
(B) for fiscal year 2005, $150,000,000;
(C) for fiscal year 2006, $120,000,000;
(D) for fiscal year 2007, $100,000,000; and
(E) for fiscal year 2008, $125,000,000.
(6) For activities in the Genomes to Life Program under section 968—
(A) for fiscal year 2004, $100,000,000;
(B) for fiscal year 2005, $170,000,000;
(C) for fiscal year 2006, $325,000,000;
(D) for fiscal year 2007, $415,000,000; and
(E) for fiscal year 2008, $455,000,000.
(7) For construction and ancillary equipment of the Genomes to Life User Facilities under section 968(d), of funds authorized under (6)—
(A) for fiscal year 2004, $16,000,000;
(B) for fiscal year 2005, $70,000,000;
(C) for fiscal year 2006, $175,000,000;
(D) for fiscal year 2007, $215,000,000; and
(E) for fiscal year 2008, $205,000,000.
(8) For activities in the Water Supply Technologies Program under section 970, $30,000,000 for each of fiscal years 2004 through 2008.

(c) In addition to the funds authorized under subsection (b)(1), the following sums are authorized for construction costs associated with the ITER project under section 962—
(1) for fiscal year 2006, $55,000,000;
(2) for fiscal year 2007, $95,000,000; and
(3) for fiscal year 2008, $115,000,000.

(d)(1) In addition to the funds authorized under subsection (b)(1), there are authorized to be appropriated to the Secretary, for crosscutting programs under section 968(e), $25,000,000 for each of fiscal years 2004 through 2008.

(2) From the sums authorized in paragraph (1), at least one consortium under section 968(e) shall be provided with not less than $10,000,000 in each fiscal year.

SEC. 962. UNITED STATES PARTICIPATION IN ITER.

(a) PARTICIPATION.—
(1) The Secretary of Energy is authorized to undertake full scientific and technological cooperation in the International Thermonuclear Experimental Reactor project (referred to in this title as ''ITER'').
(2) In the event that ITER fails to go forward within a reasonable period of time, the Secretary shall send to Congress a plan, including costs and schedules, for implementing the domestic burning plasma experiment known as the Fusion Ignition Research Experiment. Such a plan shall be developed with full consultation with the Fusion Energy Sciences Advisory Committee and be reviewed by the National Research Council.
(3) It is the intent of Congress that such sums shall be largely for work performed in the United States and that such work contributes the maximum amount possible to the U.S. scientific and technological base.

(b) PLANNING.—
(1) Not later than 180 days of the date of enactment of this act, the Secretary shall present to Congress a plan, with proposed cost estimates, budgets and potential international partners, for the implementation of the goals of this section. The plan shall ensure that—
(A) existing fusion research facilities are more fully utilized;
(B) fusion science, technology, theory, advanced computation, modeling and simulation are strengthened;
(C) new magnetic and inertial fusion research facilities are selected based on scientific innovation, cost effectiveness, and their potential to advance the goal of practical fusion energy at the earliest date possible, and those that are selected are funded at a cost-effective rate;
(D) communication of scientific results and methods between the fusion energy science community and the broader scientific and technology communities is improved;
(E) inertial confinement fusion facilities are utilized to the extent practicable for the purpose of inertial fusion energy research and development; and
(F) attractive alternative inertial and magnetic fusion energy approaches are more fully explored.
(2) Such plan shall also address the status of and, to the degree possible, costs and schedules for—
(A) in coordination with the program in section 969, the design and implementation of international or national facilities for the testing of fusion materials; and
(B) the design and implementation of international or national facilities for the testing and development of key fusion technologies.

SEC. 963. SPALLATION NEUTRON SOURCE.

(a) DEFINITION.—For the purposes of this section, the term ''Spallation Neutron Source'' means Department Project 9909E 09334, Oak Ridge National Laboratory, Oak Ridge, Tennessee.

(b) REPORT.—The Secretary shall report on the Spallation Neutron Source as part of the Department's annual budget submission, including a description of the achievement of milestones, a comparison of actual costs to estimated costs, and any changes in estimated project costs or schedule.

(c) AUTHORIZATION OF APPROPRIATIONS.—The total amount obligated by the Department, including prior year appropriations, for the Spallation Neutron Source may not exceed—
(1) $1,192,700,000 for costs of construction;
(2) $219,000,000 for other project costs; and
(3) $1,411,700,000 for total project cost.

SEC. 964. SUPPORT FOR SCIENCE AND ENERGY FACILITIES AND INFRASTRUCTURE.

(a) FACILITY AND INFRASTRUCTURE POLICY.—The Secretary shall develop and implement a strategy for facilities and infrastructure supported primarily from the Office of Science, the Office of Energy Efficiency and Renewable Energy, the Office of Fossil Energy, or the Office of Nuclear Energy, Science and Technology Programs at all national laboratories and single-purpose research facilities. Such strategy shall provide cost-effective means for—
(1) maintaining existing facilities and infrastructure, as needed;
(2) closing unneeded facilities;
(3) making facility modifications; and
(4) building new facilities.

(b) REPORT.—
(1) The Secretary shall prepare and transmit, along with the President's budget request to the Congress for fiscal year 2006, a report containing the strategy developed under subsection (a).
(2) For each national laboratory and single-purpose research facility, for the facilities primarily used for science and energy research, such report shall contain—
(A) the current priority list of proposed facilities and infrastructure projects, including cost and schedule requirements;
(B) a current ten-year plan that demonstrates the reconfiguration of its facilities and infrastructure to meet its missions and to address its long-term operational costs and return on investment;
(C) the total current budget for all facilities and infrastructure funding; and
(D) the current status of each facility and infrastructure project compared to the original baseline cost, schedule, and scope.

SEC. 965. CATALYSIS RESEARCH PROGRAM.

(a) ESTABLISHMENT.—The Secretary, through the Office of Science, shall support a program of research and development in catalysis science consistent with the Department's statutory authorities related to research and development. The program shall include efforts to—
(1) enable catalyst design using combinations of experimental and mechanistic methodologies coupled with computational modeling of catalytic reactions at the molecular level;
(2) develop techniques for high throughput synthesis, assay, and characterization at nanometer and sub-nanometer scales in situ under actual operating conditions;
(3) synthesize catalysts with specific site architectures;
(4) conduct research on the use of precious metals for catalysis; and
(5) translate molecular understanding to the design of catalytic compounds.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out this program, the Director of the Office of Science shall—
(1) support both individual investigators and multidisciplinary teams of investigators to pioneer new approaches in catalytic design;
(2) develop, plan, construct, acquire, share, or operate special equipment or facilities for the use of investigators in collaboration with national user facilities such as nanoscience and engineering centers;
(3) support technology transfer activities to benefit industry and other users of catalysis science and engineering; and
(4) coordinate research and development activities with industry and other federal agencies.

(c) TRIENNIAL ASSESSMENT.—The National Academy of Sciences shall review the catalysis program every three years to report on gains made in the fundamental science of catalysis and its progress towards developing new fuels for energy production and material fabrication processes.

SEC. 966. NANOSCALE SCIENCE AND ENGINEERING RESEARCH.

(a) ESTABLISHMENT.—The Secretary, acting through the Office of Science, shall support a program of research, development, demonstration, and commercial application in nanoscience and nanoengineering. The program shall include efforts to further the understanding of the chemistry, physics, materials science, and engineering of phenomena on the scale of nanometers and to apply this knowledge to the Department's mission areas.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—
(1) support both individual investigators and teams of investigators, including multidisciplinary teams;
(2) carry out activities under subsection (c);
(3) support technology transfer activities to benefit industry and other users of nanoscience and nanoengineering; and
(4) coordinate research and development activities with other DOE programs, industry and other Federal agencies.

(c) NANOSCIENCE AND NANOENGINEERING RESEARCH CENTERS AND MAJOR INSTRUMENTATION.—

(1) The Secretary shall carry out projects to develop, plan, construct, acquire, operate, or support special equipment, instrumentation, or facilities for investigators conducting research and development in nanoscience and nanoengineering.

(2) Projects under paragraph (1) may include the measurement of properties at the scale of nanometers, manipulation at such scales, and the integration of technologies based on nanoscience or nanoengineering into bulk materials or other technologies.

(3) Facilities under paragraph (1) may include electron microcharacterization facilities, microlithography facilities, scanning probe facilities, and related instrumentation.

(4) The Secretary shall encourage collaborations among DOE programs, institutions of higher education, laboratories, and industry at facilities under this subsection.

SEC. 967. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY MISSIONS.

(a) IN GENERAL.—The Secretary, acting through the Office of Science, shall support a program to advance the Nation's computing capability across a diverse set of grand challenge, computationally based, science problems related to departmental missions.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) advance basic science through computation by developing software to solve grand challenge science problems on new generations of computing platforms in collaboration with other DOE program offices;

(2) enhance the foundations for scientific computing by developing the basic mathematical and computing systems software needed to take full advantage of the computing capabilities of computers with peak speeds of 100 teraflops or more, some of which may be unique to the scientific problem of interest;

(3) enhance national collaboratory and networking capabilities by developing software to integrate geographically separated researchers into effective research teams and to facilitate access to and movement and analysis of large (petabyte) data sets;

(4) maintain a robust scientific computing hardware infrastructure to ensure that the computing resources needed to address departmental missions are available; and

(5) explore new computing approaches and technologies that promise to advance scientific computing including developments in quantum computing.

(c) HIGH-PERFORMANCE COMPUTING ACT OF 1991 AMENDMENTS.—The High-Performance Computing Act of 1991 is amended—

(1) in section 4 (15 U.S.C. 5503)—

(A) in paragraph (3) by striking ''means'' and inserting and 'networking and information technology' mean'', and by striking ''(including vector supercomputers and large scale parallel systems)''; and

(B) in paragraph (4), by striking ''packet switched''; and

(2) in section 203 (15 U.S.C. 5523)—

(A) in subsection (a), by striking all after ''As part of the'' and inserting: ''Networking and Information Technology Research and Development Program, the Secretary of Energy shall conduct basic and applied research in networking and information technology, with emphasis on supporting fundamental research in the physical sciences and engineering, and energy applications; providing supercomputer access and advanced communication capabilities and facilities to scientific researchers; and developing tools for distributed scientific collaboration.'';

(B) in subsection (b), by striking ''Program'' and inserting ''Networking and Information Technology Research and Development Program''; and

(C) by amending subsection (e) to read as follows:

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out the Networking and Information Technology Research and Development Program such sums as may be necessary for fiscal years 2004 through 2008.''.

(d) COORDINATION.—The Secretary shall ensure that the program under this section is integrated and consistent with—

(1) the Accelerated Strategic Computing Initiative of the National Nuclear Security Administration; and

(2) other national efforts related to advanced scientific computing for science and engineering.

SEC. 968. GENOMES TO LIFE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall carry out a program of research, development, demonstration, and commercial application, to be known as the Genomes to Life Program, in systems biology and proteomics consistent with the Department's statutory authorities.

(b) PLANNING.—

(1) The Secretary shall prepare a program plan describing how knowledge and capabilities would be developed by the program and applied to Department missions relating to energy security, environmental cleanup, and national security.

(2) The program plan will be developed in consultation with other relevant Department technology programs.

(3) The program plan shall focus science and technology on long-term goals, including—

(A) contributing to U.S. independence from foreign energy sources, including production of hydrogen;

(B) converting carbon dioxide to organic carbon;

(C) advancing environmental cleanup;

(D) providing the science and technology for new biotechnology industries; and

(E) improving national security and combating bioterrorism.

(4) The program plan shall establish specific short-term goals and update these goals with the Secretary's annual budget submission.

(c) PROGRAM EXECUTION.—In carrying out the program under this Act, the Secretary shall—

(1) support individual investigators and multidisciplinary teams of investigators;

(2) subject to subsection (d), develop, plan, construct, acquire, or operate special equipment or facilities for the use of investigators conducting research, development, demonstration, or commercial application in systems biology and proteomics;

(3) support technology transfer activities to benefit industry and other users of systems biology and proteomics; and

(4) coordinate activities by the Department with industry and other federal agencies.

(d) GENOMES TO LIFE USER FACILITIES AND ANCILLARY EQUIPMENT.—

(1) Within the funds authorized to be appropriated pursuant to this Act, the amounts specified under section 961(b)(7) shall, subject to appropriations, be available for projects to develop, plan, construct, acquire, or operate special equipment, instrumentation, or facilities for investigators conducting research, development, demonstration, and commercial application in systems biology and proteomics and associated biological disciplines.

(2) Projects under paragraph (1) may include—

(A) the identification and characterization of multiprotein complexes;

(B) characterization of gene regulatory networks;

(C) characterization of the functional repertoire of complex microbial communities in their natural environments at the molecular level; and

(D) development of computational methods and capabilities to advance understanding of complex biological systems and predict their behavior.

(3) Facilities under paragraph (1) may include facilities, equipment, or instrumentation for—

(A) the production and characterization of proteins;

(B) whole proteome analysis;

(C) characterization and imaging of molecular machines; and

(D) analysis and modeling of cellular systems.

(4) The Secretary shall encourage collaborations among universities, laboratories and industry at facilities under this subsection. All facilities under this subsection shall have a specific mission of technology transfer to other institutions.

(e) CROSSCUTTING RESEARCH WITH NANOTECHNOLOGY PROGRAMS.—The Secretary shall support one or more consortia to integrate nanotechnology and microfluidic tools with research and development in genomics, systems biology, immunology, and molecular imaging.

SEC. 969. FISSION AND FUSION ENERGY MATERIALS RESEARCH PROGRAM.

In the President's fiscal year 2006 budget request, the Secretary shall establish a research and development program on material science issues presented by advanced fission reactors and the Department's fusion energy program. The program shall develop a catalog of material properties required for these applications, develop theoretical models for materials possessing the required properties, benchmark models against existing data, and develop a roadmap to guide further research and development in this area.

SEC. 970. ENERGY-WATER SUPPLY TECHNOLOGIES PROGRAM.

(a) ESTABLISHMENT.—There is established within the Office of Science, Office of Biological and Environmental Research, the ''Energy-Water Supply Technologies Program,'' to study energy-related issues associated with water resources and municipal waterworks and to study water supply issues related to energy production.

(b) DEFINITIONS.—

(1) The term ''Foundation'' means the American Water Works Association Research Foundation.

(2) The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(3) The term ''Program'' means the Water Supply Technologies Program established by section 970(a).

(c) PROGRAM AREAS.—The program shall conduct research and development, including—

(1) arsenic removal under subsection (d);

(2) desalination research program under subsection (e);

(3) the water and energy sustainability program under subsection (f); and

(4) other energy-intensive water supply and treatment technologies and other technologies selected by the Secretary.

(d) ARSENIC REMOVAL PROGRAM.—

(1) As soon as practicable after the date of enactment of this Act, the Secretary shall enter into a contract with the Foundation to utilize the facilities, institutions and relationships established in the ''Consolidated Appropriations Resolution, 2003'' as described in Senate Report 107–220 that will

carry out a research program to develop and demonstrate innovative arsenic removal technologies.

(2) In carrying out the arsenic removal program, the Foundation shall, to the maximum extent practicable, conduct research on means of—

(A) reducing energy costs incurred in using arsenic removal technologies;

(B) minimizing materials, operating, and maintenance costs incurred in using arsenic removal technologies; and

(C) minimizing any quantities of waste (especially hazardous waste) that result from use of arsenic removal technologies.

(3) The Foundation shall carry out peer-reviewed research and demonstration projects to develop and demonstrate water purification technologies.

(4) In carrying out the arsenic removal program—

(A) demonstration projects will be implemented with municipal water system partners to demonstrate the applicability of innovative arsenic removal technologies in areas with different water chemistries representative of areas across the United States with arsenic levels near or exceeding EPA guidelines; and

(B) not less than 40 percent of the funds of the Department used for demonstration projects under the arsenic removal program shall be expended on projects focused on needs of and in partnership with rural communities or Indian tribes.

(5) The Foundation shall develop evaluations of cost effectiveness of arsenic removal technologies used in the program and an education, training, and technology transfer component for the program.

(6) The Secretary shall consult with the Administrator of the Environmental Protection Agency to ensure that activities under the arsenic removal program are coordinated with appropriate programs of the Environmental Protection Agency and other federal agencies, state programs and academia.

(7) Not later than 1 year after the date of commencement of the arsenic removal program, and annually thereafter, the Secretary shall submit to Congress a report on the results of the arsenic removal program.

(e) DESALINATION PROGRAM.—

(1) The Secretary, in cooperation with the Commissioner of Reclamation, shall carry out a desalination research program in accordance with the desalination technology progress plan developed in Title II of the Energy and Water Development Appropriations Act, 2002 (115 Stat. 498), and described in Senate Report 107–39 under the heading ''WATER AND RELATED RESOURCES'' in the ''BUREAU OF RECLAMATION'' section.

(2) The desalination program shall—

(A) draw on the national laboratory partnership established with the Bureau of Reclamation to develop the January 2003 national Desalination and Water Purification Technology Roadmap for next-generation desalination technology;

(B) focus on research relating to, and development and demonstration of, technologies that are appropriate for use in desalinating brackish groundwater, wastewater and other saline water supplies; disposal of residual brine or salt; and

(C) consider the use of renewable energy sources.

(3) Under the desalination program, funds made available may be used for construction projects, including completion of the National Desalination Research Center for brackish groundwater and ongoing facility operational costs.

(4) The Secretary and the Commissioner of Reclamation shall jointly establish a steering committee for the desalination program. The steering committee shall be jointly chaired by 1 representative from this Program and 1 representative from the Bureau of Reclamation.

(f) WATER AND ENERGY SUSTAINABILITY PROGRAM.—

(1) The Secretary shall carry out a research program to develop understanding and technologies to assist in ensuring that sufficient quantities of water are available to meet present and future requirements.

(2) Under this program and in collaboration with other programs within the Department including those within the Offices of Fossil Energy and Energy Efficiency and Renewable Energy, the Secretary of the Interior, Army Corps of Engineers, Environmental Protection Agency, Department of Commerce, Department of Defense, state agencies, non-governmental agencies and academia, the Secretary shall assess the current state of knowledge and program activities concerning—

(A) future water resources needed to support energy production within the United States including but not limited to the water needs for hydropower and thermo-electric power generation;

(B) future energy resources needed to support development of water purification and treatment including desalination and long-distance water conveyance;

(C) reuse and treatment of water produced as a by-product of oil and gas extraction;

(D) use of impaired and non-traditional water supplies for energy production and other uses; and

(E) technologies to reduce water use in energy production.

(3) In addition to the assessments in (2), the Secretary shall—

(A) develop a research plan defining the scientific and technology development needs and activities required to support long-term water needs and planning for energy sustainability, use of impaired water for energy production and other uses, and reduction of water use in energy production;

(B) carry out the research plan required under (A) including development of numerical models, decision analysis tools, economic analysis tools, databases, planning methodologies and strategies;

(C) implement at least three planning demonstration projects using the models, tools and planning approaches developed under subparagraph (B) and assess the viability of these tools at the scale of river basins with at least one demonstration involving an international border; and

(D) transfer these tools to other federal agencies, state agencies, non-profit organizations, industry and academia for use in their energy and water sustainability efforts.

(4) Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the water and energy sustainability program that describes the research elements described under paragraph (2), and makes recommendations for a management structure that optimizes use of Federal resources and programs.

(g) COST SHARING.—

(1) Research projects under this section shall not require cost-sharing.

(2) Each demonstration project carried out under the Program shall be carried out on a cost-shared basis, as determined by the Secretary.

(3) With respect to a demonstration project, the Secretary may accept in-kind contributions, and waive the cost-sharing requirement in appropriate circumstances.

SA 1473. Mr. SMITH (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title XI, add the following:

Subtitle I—Miscellaneous

SEC. 1195. ENERGY SECURITY OF ISRAEL.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President may export oil to, or secure oil for, any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(b) MEMORANDUM OF AGREEMENT.—The following agreements shall be deemed to have entered into force by operation of law and shall be deemed to have no termination date:

(1) The agreement entitled ''Agreement amending and extending the memorandum of agreement of June 22, 1979'', entered into force November 13, 1994 (TIAS 12580).

(2) The agreement entitled ''Agreement amending the contingency implementing arrangements of October 17, 1980'', entered into force June 27, 1995 (TIAS 12670).

SA 1474. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I of division B, add the following:

SEC. 102. EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES TO INCLUDE INCREMENTAL HYDROPOWER.

(a) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by this Act, is amended—

(1) by striking ''and'' at the end of subparagraph (G),

(2) by striking the period at the end of subparagraph (H) and inserting '', and'', and

(3) by adding at the end the following new subparagraph:

''(I) incremental hydropower.''.

(b) INCREMENTAL HYDROPOWER.—Section 45(c), as amended by this Act, is amended by adding at the end the following new paragraph:

''(8) INCREMENTAL HYDROPOWER.—

''(i) IN GENERAL.—The term 'incremental hydropower' means for any taxable year an amount equal to the percentage of total kilowatt hours of electricity produced from a hydropower facility described in subsection (d)(8) attributable to efficiency improvements or additions of capacity as determined under clause (ii).

''(ii) DETERMINATION OF INCREMENTAL HYDROPOWER PRODUCTION.—For purposes of clause (i), incremental hydropower production for any hydropower facility for any taxable year shall be determined by establishing a percentage of average annual hydropower production at the facility attributable to the efficiency improvements or additions of capacity using the same water flow information used to determine an historic average annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Secretary in consultation with the Federal Energy Regulatory Commission. For purposes of the preceding sentence, the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.''.

(c) INCREMENTAL HYDROPOWER FACILITY.—Section 45(d) (relating to qualified facilities),

as amended by this Act, is amended by adding at the end the following new paragraph:

''(8) INCREMENTAL HYDROPOWER FACILITY.—

''(A) IN GENERAL.—In the case of a facility using incremental hydropower to produce electricity, the term 'qualified facility' means any non-Federal hydroelectric facility owned by the taxpayer the efficiency improvements or additions of capacity to which are originally placed in service after the date of the enactment of the Energy Tax Incentives Act of 2003 and before January 1, 2009.

''(B) SPECIAL RULES.—

''(i) 4-YEAR PERIOD.—In the case of a qualified facility described in subparagraph (A), the 4-year period beginning on the date the efficiency improvements or additions of capacity to the facility are originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(ii) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this paragraph, a facility which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualified facility during such period.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

SA 1475. Mr. SANTORUM (for himself and Mr. ROCKEFELLER) submitted an amendment intended to be proposed to amendment SA 1424 submitted by Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DOMENICI, and Mr. BINGAMAN) and intended to be proposed to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 221 of Division B, after line 24, insert the following:

(e) CLARIFICATION RELATING TO COAL WASTE SLUDGE.—

(1) IN GENERAL.—Subsection (c) of section 29 (relating to definition of qualified fuels) is amended by inserting at the end the following new paragraph:

''(4) COAL WASTE SLUDGE.—

''(A) IN GENERAL.—The term 'solid synthetic fuels produced from coal' includes liquefied coal waste sludge.

''(B) COAL WASTE SLUDGE.—For purposes of this section, the term 'coal waste sludge' means the tar decanter sludge and related byproducts of the coking process which are liquefied and processed with coal into a feedstock for the manufacture of coke.''.

(2) DENIAL OF DOUBLE BENEFIT.—Subsection (d) of section 29, as amended by subsection (b), is amended by inserting at the end the following new paragraph:

''(10) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for a qualified fuel produced from coal and liquefied coal waste sludge to the extent to which a credit is also allowed for the production of any coal waste sludge used in the production of such qualified fuel.''.

SA 1476. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, strike ''ending on—'' and all that follows through ''2007.'' on line 21 and insert ''ending on December 31, 2007.''.

SA 1477. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, strike lines 12–16 and insert the following:

''(ii) which has an electrical capacity of no more than 15,000 kilowatts or a mechanical energy capacity of no more than 2,000 horsepower or an equivalent combination of electrical and mechanical energy capacities,''.

On page 134, line 4, strike ''(70 percent'' and all that follows through ''capacities)'' on line 10.

On page 136, strike lines 16 through ''section 168.'' on line 22.

SA 1478. Mr. BINGAMAN (for himself and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title III of division B, insert the following:

SEC. ___. ALLOWANCE OF DEDUCTION FOR QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179C the following new section:

''SEC. 179D. DEDUCTION FOR QUALIFIED ENERGY MANAGEMENT DEVICES.

''(a) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who is a supplier of electric energy or a provider of electric energy services, there shall be allowed as a deduction an amount equal to the cost of each qualified energy management device placed in service during the taxable year.

''(b) MAXIMUM DEDUCTION.—The deduction allowed by this section with respect to each qualified energy management device shall not exceed $30.

''(c) QUALIFIED ENERGY MANAGEMENT DEVICE.—The term 'qualified energy management device' means any meter or metering device which is used by the taxpayer—

''(1) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and

''(2) to provide such data on at least a monthly basis to both consumers and the taxpayer.

''(d) PROPERTY USED OUTSIDE THE UNITED STATES NOT QUALIFIED.—No deduction shall be allowed under subsection (a) with respect to property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

''(e) BASIS REDUCTION.—

''(1) IN GENERAL.—For purposes of this subtitle, if a deduction is allowed under this section with respect to a qualified energy management device, the basis of such property shall be reduced by the amount of the deduction so allowed.

''(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property that is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

''(f) TERMINATION.—This section shall not apply to any qualified energy management device placed in service after December 31, 2007.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting '', or'', and by inserting after subparagraph (J) the following new subparagraph:

''(K) expenditures for which a deduction is allowed under section 179D.''.

(2) Section 312(k)(3)(B), as amended by this Act, is amended by striking ''or 179C'' each place it appears in the heading and text and inserting ''179C, or 179D''.

(3) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (33), by striking the period at the end of paragraph (34) and inserting '', and'', and by adding at the end the following new paragraph:

''(35) to the extent provided in section 179D(e)(1).''.

(4) Section 1245(a), as amended by this Act, is amended by inserting ''179D,'' after ''179C,'' both places it appears in paragraphs (2)(C) and (3)(C).

(5) The table of contents for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179C the following new item:

''Sec. 179D. Deduction for qualified energy management devices.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified energy management devices placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SA 1479. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike title XI.

SA 1480. Mr. BINGAMAN (for himself, Ms. COLLINS, Mr. JEFFORDS, Mr. CHAFEE, Mr. DORGAN, and Ms. CANTWELL) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United states, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title V renewables add the following.

Subtitle E—Renewable Portfolio Standard

SEC. 541 RENEWABLE PORTFOLIO STANDARD.

Titel VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is amended by adding at the end the following:

''SEC. 606. FEDERAL RENEWABLE PORTFOLIO STANDARD.

''(a) RENEWABLE ENERGY REQUIREMENTS.—

''(1) IN GENERAL.—Each electric utility that sells electricity to electric consumers shall obtain a percentage of the base amount of electricity it sells to electric consumers in any calendar year from new renewable energy or existing renewable energy. The percentage obtained in a calendar year shall not be less than the amount specified in the following table:

''Calendar year	**Minimum annual percentage**
2008 through 2011	2.5
2012 through 2015	5.0
2016 through 2019	7.5
2020 through 2030	10.0

''(2) MEANS OF COMPLIANCE.—An electric utility shall meet the requirements of paragraph (1) by—

''(A) generating electric energy using new renewable energy or existing renewable energy;

''(B) purchasing electric energy generated by new renewable energy or existing renewable energy;

''(C) Purchasing renewable energy credits issued under subsection (b); or

''(D) A combination of the foregoing.

''(b) RENEWABLE ENERGY CREDIT TRADING PROGRAM.—

''(1) Not later than January 1, 2005, the Secretary shall establish a renewable energy credit trading program to permit an electric utility that does not generate or purchase enough electric energy from renewable energy to meet its obligations under subsection (a)(1) to safisfy such requirements by purchasing sufficient renewable energy credits.

''(2) As part of such program the Secretary shall—

''(A) issue renewable energy credits to generators of electric energy from new renewable energy;

''(B) sell renewable energy credits to electric utilities at the rate of 1.5 cents per kilowatt-hour (as adjusted for inflation under subsection (g));

''(C) ensure that a kilowatt hour, including the associated renewable energy credits, shall be used only once for purposes of compliance with this section;

''(D) allow double credits for generation from facilities on Indian Lands, and triple credits for generation from small renewable distributed generators, i.e., those no larger than one megawatt.

''(3) Credits under paragraph (2)(A) may only be used for compliance with this section for 3 years from the data issued.

''(c) ENFORCEMENT.—

''(1) CIVIL PENALTIES.—Any electric utility that fails to meet the energy renewable requirements of subjection (a) shall be subject to a civil penalty.

''(2) AMOUNT OF PENALTY.—The amount of the civil penalty shall be determined by multiplying the number of kilowatt-hours of electric energy sold to electric consumers in violation of subjection (a) by the greater of 1.5 cents (adjusted for inflation under subsection (g)) or 200 percent of the average market value of renewable energy credits during the year in which the violation occurred.

''(3) MITIGATION OR WAIVER.—The Secretary may mitigate or waive a civil penalty under this subsection if the electric utility was unable to comply with subjection (a) for reasons outside of the reasonable control of the utility.

''(4) PROCEDURE FOR ASSESSING PENALTY.—The Secretary shall assess a civil penalty under this subsection in accordance with the procedures prescribed by section 333(d) of the Energy Policy and Conservation Act of 1954 (42 U.S.C. 6303).

''(d) STATE RENEWABLE ENERGY ACCOUNT PROGRAM.—

''(1) The Secretary shall establish, not later than December 31, 2008, a State renewable energy account program.

''(2) All money collected by the Secretary from the sale of renewable energy credits and the assessment of civil penalties under this section shall be deposited into the renewable energy account established pursuant to this subsection. The State renewable energy account shall be held by the Secretary and shall not be transferred to the Treasury Department.

''(3) Proceeds deposited in the State renewable energy account shall be used by the Secretary, subject to appropriations, for a program to provide grants to the State agency responsible for developing State energy conservation plans under section 363 of the Energy Policy and Conservation Act (42 U.S.C. 6322) for the purposes of promoting renewable energy production, including programs that promote technologies that reduce the use of electricity at customer sites such as solar water heating.

''(4) The Secretary may issue guidelines and criteria for grants awarded under this subsection. State energy offices receiving grants under this section shall maintain such records and evidence of compliance as the Secretary may require.

''(5) In allocating funds under this program, the Secretary shall give preference to States in regions which have a disproportionately small share of economically sustainable renewable energy generation capacity; and to State programs to stimulate or enhance innovative renewable energy technologies.

''(e) RULES.—The Secretary shall issue rules implementing this section not later than one year after the date of enactment of this section.

''(f) EXEMPTIONS.—This section shall not apply in any calendar year to an electric utility

''(1) that sold less than 4,000,000 megawatt-hours of electric energy to electric consumers during the preceding calendar year; or

''(2) in Hawaii.

''(g) INFLATION ADJUSTMENT.—Not later than December 31 of each year beginning in 2008, the Secretary shall adjust for inflation the price of a renewable energy credit under subsection (b)(2)(B) and the amount of the civil penalty per kilowatt-hour under subsection (c)(2).

''(h) STATE PROGRAMS.—Nothing in this section shall diminish any authority of a State or political subdivision thereof to adopt or enforce any law or regulation respecting renewable energy, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this section. The Secretary, in consultation with States having such renewable energy programs, shall, to the maximum extent practicable, facilitate coordination between the Federal program and State programs.

''(i) DEFINITIONS.—For purposes of this section:

''(1) The term 'base amount of electricity' means the total amount of electricity sold by an electric utility to electric consumers in a calendar year, excluding—

''(A) electricity generated by a hydroelectric facility (except incremental hydropower); and

''(B) electricity generated through the incineration of municipal solid waste.

''(2) The term 'existing renewable energy' means, except as provided in paragraph (3)(B), electric energy generated at a facility (including a distributed generation facility) placed in service prior to the date of enactment of this section from solar, wind, ocean, current, wave, tidal or goethermal energy; biomass (as defined in section 504(b)); or landfill gas.

''(3) The term 'new renewable energy' means—

''(A) electric energy generated at a facility (including a distributed generation facility) placed in service on or after the date of enactment of this section from solar, wind, ocean, current, wave, tidal or geothermal energy; biomass (as defined in section 504(b)); landfill, gas; or incremental hydropower; and

''(B) for electric energy generated at a facility (including a distributed generation facility) placed in service prior to the date of enactment of this section—

''(i) the additional energy above the average generation in the 3 years preceding the date of enactment of this section at the facility from solar, wind, or ocean energy; biomass (as defined in section 504(b)); landfill gas or incremental hydropower.

''(ii) the incremental geothermal production.

''(4) The term 'distributed generation facility' means a facility at a customer site.

''(5) The term 'incremental hydropower' means additional energy generated as a result of efficiency improvements or capacity additions made on or after the date of enactment of this section or the effective date of an existing applicable State renewable portfolio standard program at a hydroelectric facility that was placed in service before that date. The term does not include additional energy generated as a result of operational changes not directly associated with efficiency improvements or capacity additions. Efficiency improvements and capacity additions shall be measured on the basis of the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility and certified by the Secretary or the Federal Energy Regulatory Commission.

''(6) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2) of the Internal Revenue Code of 1986).

''(7) INCREMENTAL GEOTHERMAL PRODUCTION.—

''(A) IN GENERAL.—The term'; incremental geothermal production' means for any year the excess of—

''(i) the total kilowatt hours of electricity produced from a facility (including a distributed generation facility) using geothermal energy, over

''(ii) the average annual kilowatt hours produced at such facility for 5 of the previous 7 calendar years before the date of enactment of this section after eliminating the highest and the lowest kilowatt hour production years in such 7-year period.

''(B) SPECIAL RULE.—A facility described in subparagraph (A) which was placed in service at least 7 years before the date of enactment of this section shall commencing with the year in which such date of enactment occurs, reduce the amount calculated under subparagraph (A)(ii) each year, on a cumulative basis, by the average percentage decrease in the annual kilowatt hour production for the 7-year period described in subparagraph (A)(ii) with such cumulative sum not to exceed 30 percent.

''(j) SUNSET.—This section expires on December 31, 2030.''.

SA 1481. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in the amendment, strike section 715 and insert the following:

SEC. 715. REDUCTION OF ENGINE IDLING OF HEAVY-DUTY VEHICLES.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ADVANCED TRUCK STOP ELECTRIFICATION SYSTEM.—The term ''advanced truck stop electrification system'' means a stationary and independent electrification system that delivers heat, air conditioning, electricity, communications, and other convenient services, and is capable of providing verifiable and auditable evidence of use of those services, to a heavy-duty vehicle and any occupants of the heavy-duty vehicle without relying on components mounted onboard the heavy-duty vehicle for delivery of those services.

(3) AUXILIARY POWER UNIT.—The term ''auxiliary power unit'' means an integrated system that—

(A) provides heat, air conditioning, engine warming, and electricity to the factory-installed components on a heavy-duty vehicle as if the main drive engine of the heavy-duty vehicle were running; and

(B) is certified by the Administrator of the Environmental Protection Agency under part 89 of title 40, Code of Federal Regulations (or successor regulations), as meeting applicable emission standards.

(4) HEAVY-DUTY VEHICLE.—The term ''heavy-duty vehicle'' means a vehicle that—

(A) has a gross vehicle weight rating greater than 12,500 pounds; and

(B) is powered by a diesel engine.

(5) IDLE REDUCTION TECHNOLOGY.—The term ''idle reduction technology'' means an advanced truck stop electrification system, auxiliary power unit, or another device or system of devices that—

(A) is used to reduce long-duration idling of a heavy-duty vehicle; and

(B) allows for the main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle to be shut down.

(6) LONG-DURATION IDLING.—

(A) IN GENERAL.—The term ''long-duration idling'' means the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle, for a period greater than 15 consecutive minutes, at a time at which the main drive engine is not engaged in gear.

(B) EXCLUSIONS.—The term ''long-duration idling'' does not include the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle during a routine stoppage associated with traffic movement or congestion.

(b) IDLE REDUCTION TECHNOLOGY BENEFITS, PROGRAMS, AND STUDIES.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall—

(A)(i) commence a review of the mobile source air emission models of the Environmental Protection Agency used under the Clean Air Act (42 U.S.C. 7401 et seq.) to determine whether the models accurately reflect the emissions resulting from long-duration idling of heavy-duty vehicles and other vehicles and engines; and

(ii) update those models as the Administrator determines to be appropriate; and

(B)(i) commence a review of the emission reductions achieved by the use of idle reduction technology; and

(ii) complete such revisions of the regulations and guidance of the Environmental Protection Agency as the Administrator determines to be appropriate.

(2) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall—

(A) complete the reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1); and

(B) prepare and make publicly available 1 or more reports on the results of the reviews.

(3) DISCRETIONARY INCLUSIONS.—The reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1) and the reports under paragraph (2)(B) may address the potential fuel savings resulting from use of idle reduction technology.

(4) IDLE REDUCTION DEPLOYMENT PROGRAM.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Administrator, in consultation with the Secretary of Transportation, shall establish a program to support deployment of idle reduction technology that benefits strategic locations based on air quality and congestion considerations.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator such sums as are necessary to carry out subparagraph (A).

(5) IDLING LOCATION STUDY.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Administrator, shall commence a study to analyze all locations at which heavy-duty vehicles stop for long duration idling, including—

(i) truck stops;

(ii) rest areas;

(iii) border crossings;

(iv) ports;

(v) transfer facilities; and

(vi) private terminals.

(B) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(i) complete the study under subparagraph (A); and

(ii) prepare and make publicly available 1 or more reports of the results of the study.

(c) VEHICLE WEIGHT EXEMPTION.—Section 127(a) of title 23, United States Code, is amended—

(1) by designating the first through eleventh sentences as paragraphs (1) through (11), respectively; and

(2) by adding at the end the following:

''(12) HEAVY-DUTY VEHICLES.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), in order to promote reduction of fuel use and emissions due to engine idling, the maximum gross vehicle weight limit and the axle weight limit for any heavy-duty vehicle equipped with an idle reduction technology shall be increased by a quantity necessary to compensate for the additional weight of the idle reduction system.

''(B) MAXIMUM WEIGHT INCREASE.—The weight increase under subparagraph (A) shall be not greater than 250 pounds.

''(C) PROOF.—On request by a regulatory or law enforcement agency, the vehicle operator shall provide proof (through demonstration or certification) that—

''(i) the idle reduction technology is fully functional at all times; and

''(ii) the 250-pound gross weight increase is not used for any purpose other than the use of idle reduction technology described in subparagraph (A).''.

SA 1482. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike the text starting on page 159, line 14, through page 165, line 14, and insert the following:

SEC. 511. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) ALTERNATIVE MANDATORY CONDITIONS.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following:

(h)(1) Whenever any person applies for a license for any project works within any reservation of the United States, and the Secretary of the department under whose supervision such reservation falls deems a condition to such license to be necessary under the first proviso of subsection (e), the license applicant or any other party to the licensing proceeding may propose an alternative condition.

''(2) Notwithstanding the first proviso of subsection (e), the Secretary of the department under whose supervision the reservation falls shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence provided by the party proposing such alternative condition, that the alternative condition—

''(A) provides no less protection for the reservation than provided by the condition deemed necessary by the Secretary; and

''(B) will either—

''(i) cost less to implement, or

''(ii) result in improved operation of the project works for electricity production,

as compared to the condition deemed necessary by the Secretary.

''(3) Within 1 year after the enactment of this subsection, each Secretary concerned shall, by rule, establish a process to expeditiously resolve conflicts arising under this subsection.''.

(b) ALTERNATIVE FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by—

(1) inserting ''(a)'' before the first sentence; and

(2) adding at the end the following:

''(b)(1) Whenever the Commission shall require a licensee to construct, maintain, or operate a fishway prescribed by the Secretary of the Interior or the Secretary of Commerce under this section, the licensee or any other party to the proceeding may propose an alternative to such prescription to construct, maintain, or operate a fishway.

''(2) Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the party proposing such alternative, that the alternative—

''(A) will be no less effective than the fishway initially prescribed by the Secretary, and

''(B) will either—

''(i) cost less to implement, or

''(ii) result in improved operation of the project works for electricity production.

as compared to the fishway initially prescribed by the Secretary.

''(3) Within 1 year after the enactment of this subsection, the Secretary of the Interior and the Secretary of Commerce shall each, by rule, establish a process to expeditiously resolve conflicts arising under this subsection.''.

SA 1483. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike the text starting on page 159, line 14, through page 165, line 14, and insert the following:

SEC. 511. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) ALTERNATIVE MANDATORY CONDITIONS.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following:

''(h)(1) Whenever any person applies for a license for any project works within any reservation of the United States under subsection (e), and the Secretary of the department under whose supervision such reservation falls (in this subsection referred to as the 'Secretary') shall deem a condition to such license to be necessary under the first proviso of such section, the license applicant or any party to the licensing proceeding, including States and Indian tribes, may propose an alternative condition.

''(2) Notwithstanding the first proviso of subsection (e), the Secretary of the department under whose supervision the reservation falls shall accept the proposed alternative condition referred to in paragraph (1), the Commission shall include in the license such alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence provided by the party proposing such alternative condition, that the alternative condition—

''(A) provides for the adequate protection and utilization of the reservation; and

''(B) will either—

''(i) cost less to implement, or

''(ii) result in improved operation of the project works for electricity production as compared to the condition initially deemed necessary by the Secretary.

''(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under subsection (e) or alternative condition it accepts under this subsection a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this subsection, including the effects of the condition accepted and alternatives not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.''.

(b) ALTERNATIVE FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by—

(1) inserting ''(a)'' before the first sentence; and

(2) adding at the end the following:

''(b)(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under this section, the license applicant or nay other party to the licensing proceeding, including States and Indian tribes, may propose an alternative to such prescription to construct, maintain, or operate a fishway.

''(2) Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative fishway referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the party proposing such alternative, that the alternative—

''(A) will be no less effective than the fishway initially prescribed by the Secretary; and

''(B) will either—

''(i) cost less to implement, or

''(ii) result in improved operation of the project works for electricity production as compared to the fishway initially prescribed by the Secretary.

''(3) The Secretary shall submit into the public record of the Commission proceeding with any prescription under subsection (a) or alternative prescription it accepts under this subsection a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this subsection, including the effects of the prescription accepted or alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.''

SA 1484. Mr. REID (for himself and Mr. ENSIGN) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title IV, insert the following:

SEC. 4___. WHISTLEBLOWER PROTECTION.

(a) DEFINITION OF EMPLOYER.—Section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking ''that is indemnified'' and all that follows through ''12344.'' and inserting ''or the Commission; and''; and

(3) by adding at the end the following:

''(E) the Department of Energy and the Commission.''.

(b) DE NOVO JUDICIAL DETERMINATION.—Section 211(b) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(b)) is amended by adding at the end the following:

''(4) DE NOVO JUDICIAL DETERMINATION.—If the Secretary does not issue a final decision within 180 days after the filing of a complaint under paragraph (1) and the Secretary does not show that the delay is caused by the bad faith of the claimant, the claimant may bring a civil action in United States district court for a determination of the claim by the court de novo.''.

SA 1485. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 46, lines 14 and 15, strike ''(ii) or (iii)'' and insert ''(ii), (iii), or (iv)''.

On page 47, between lines 10 and 11, insert the following:

''(iv) if such vehicle is a 2-wheel electric cycle that has a vehicle identification number and meets all applicable Federal motor vehicle safety standards, the lesser of—

''(I) 10 percent of the manufacturer's suggested retail price, or

''(II) $200.

On page 48, between lines 18 and 19, insert the following:

(3) VEHICLES WITH LESS THAN 4 WHEELS.—Section 30(c)(2) is amended by striking ''4'' and inserting ''2''.

On page 40, line 7, after ''30(c)(2)'' insert '', except that '4 wheels' shall be substituted for '2 wheels'''.

On page 58, line 16, after ''30(c)(2)'' insert '', except that '4 wheels' shall be substituted for '2 wheels'''.

SA 1486. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE XII—NATURAL GAS

SEC. 1201. REDUCTION OF DEPENDENCE ON NATURAL GAS.

(a) REPORT.—

(1) IN GENERAL.—Not later than February 1, 2004, and annually thereafter, the President shall submit to Congress a report, based on the most recent edition of the Annual Energy Outlook published by the Energy Information Administration, assessing the progress made by the United States toward the goal of reducing excessive dependence on natural gas by 2015 and 2025.

(2) CONTENTS.—The report under paragraph (1) shall—

(A) include a description of the implementation, during the previous fiscal year, of provisions under this Act relating to natural gas production and efficiency;

(B) assess the effectiveness of those provisions in meeting the goal described in paragraph (1);

(C) describe the progress in developing and implementing measures under subsection (b); and

(D) identify opportunities to reduce natural gas demand further through new legislative initiatives.

(b) MEASURES TO REDUCE NATURAL GAS DEPENDENCE THROUGH INCREASED EFFICIENCY AND CONSERVATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the President shall develop and implement measures to conserve natural gas in end uses (not including electrical generation) throughout the economy of the United States sufficient to reduce total end use demand for natural gas in the United States by at least 10 percent from the amount projected for calendar year 2015, and by at least 20 percent from the amount projected for 2025, in the reference case contained in the report of the Energy Information Administration entitled ''Annual Energy Outlook 2003''.

(2) BASIS OF CALCULATIONS.—For the purpose of developing measures under paragraph (1), the President shall calculate levels of demand and demand reduction in such a manner as to account only for efficiency increases and conservation and not reflect changes caused by fuel switching to or from natural gas.

(3) CONTENTS.—The measures under paragraph (1) shall be designed to ensure continued reliable and affordable energy for consumers.

(4) IMPLEMENTATION.—The measures under paragraph (1) shall be implemented under existing authorities of appropriate Federal executive agencies identified by the President.

SA 1487. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 32(d) of the Outer Continental Shelf Lands Act (as added by section 111), add the following:

''(5) COASTAL IMPACT ASSISTANCE PLANS OF COASTAL POLITICAL SUBDIVISIONS.—

''(A) IN GENERAL.—A Coastal Impact Assistance Plan for the State of Louisiana shall include a coastal impact assistance plan developed by each coastal political subdivision in the State of Louisiana.

''(B) APPROVAL.—In approving the plans of the coastal political subdivisions, the Governor of the State of Louisiana shall have the authority only to ensure that the proposed uses of funds that are included in the plans of the coastal political subdivisions are consistent with the authorized uses under subsection (e).

SA 1488. Mr. LAUTENBERG (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title III of Division B, insert the following:

SEC. ___. QUALIFIED DUCT SEALING SERVICES AND QUALIFIED AIR INFILTRATION REDUCTION SERVICES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by

this Act, is amended by inserting after section 25D the following new section:

"SEC. 25E. QUALIFIED DUCT SEALING SERVICES AND QUALIFIED AIR INFILTRATION REDUCTION SERVICES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the amount paid or incurred by the taxpayer for qualified duct sealing services or qualified air infiltration reduction services performed during such year.

''(b) LIMITATION.—The credit allowed by this section with respect to a dwelling for any taxable year shall not exceed $300, reduced (but not below zero) by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all preceding taxable years.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) QUALIFIED DUCT SEALING SERVICES; QUALIFIED AIR INFILTRATION REDUCTION SERVICES.—For purposes of this section—

''(1) QUALIFIED DUCT SEALING SERVICES.—

''(A) IN GENERAL.—The term 'qualified duct sealing services' means services which bring the duct system of a dwelling into compliance with the Energy Star Duct Specifications published by the Environmental Protection Agency if such service is performed with regard to a dwelling which—

''(i) is located in the United States,

''(ii) has not been treated as a qualifying new home for purposes of any credit allowed under section 45G, and

''(iii) is owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121).

''(B) CERTIFICATION REQUIRED.—Services shall not be considered to be qualified duct sealing services unless the dwelling is determined to be not in compliance with such Energy Star Duct Specifications before such services and certified to be in compliance with such Energy Star Duct Specifications after such services.

''(2) QUALIFIED AIR INFILTRATION REDUCTION SERVICES.—

''(A) IN GENERAL.—The term 'qualified air infiltration reduction services' means services which bring the air infiltration of a dwelling into compliance with the infiltration requirements in the Energy Star Home Sealing Specifications published by the Environmental Protection Agency, if such service is performed with regard to a dwelling which—

''(i) is located in the United States,

''(ii) has not been treated as a qualifying new home for purposes of any credit allowed under section 45G, and

''(iii) is owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121).

''(B) CERTIFICATION REQUIRED.—Services shall not be considered to be qualified air infiltration reduction services unless the dwelling is determined to not be in compliance with such Energy Star Home Sealing Specifications before such services and is certified to be in compliance with such Energy Star Home Sealing Specifications after such services.

''(e) CERTIFICATION.—

''(1) METHODS OF CERTIFICATION.—

''(A) QUALIFIED DUCT SEALING SERVICES.—The determination and certification described in paragraph (1) of subsection (d) shall be on the basis of test reports performed in accordance with the Energy Star Duct Specifications.

''(B) QUALIFIED AIR INFILTRATION REDUCTION SERVICES.—The determination and certification described in paragraph (2) of subsection (d) shall be on the basis of test reports performed in accordance with the Energy Star Home Sealing Specifications.

''(2) PROVIDER.—A determination or certification described in subsection (d) shall be provided by a State-licensed contractor.

''(3) FORM.—A certification described in subsection (d) shall be made in writing on forms which provide test data on air infiltration and duct leakage, as appropriate, both before and after services are provided, provide a signed certification that all relevant aspects of the appropriate Environmental Protection Agency specifications have been met, and include a permanent label affixed to the electrical distribution panel of the dwelling.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable under subsection (a) by reason of expenditures for qualified duct sealing services or qualified air infiltration reduction services made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified duct sealing services or qualified air infiltration reduction services expenditures made by such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having paid the individual's proportionate share of the cost of qualified duct sealing services or qualified air infiltration reduction services expenditures made by such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term 'dwelling ' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(h) TERMINATION.—Subsection (a) shall not apply to qualified duct sealing services or qualified air infiltration reduction services performed after December 31, 2005.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25E(b), as added by subsection (a), is amended—

(A) by striking ''The credit'' and inserting the following:

''(1) DOLLAR AMOUNT.—The credit'', and

(B) by adding at the end the following new paragraph:

''(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25E(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B), as amended by this Act, is amended by striking ''sections 25C and 25D'' and inserting ''sections 25C, 25D, and 25E''.

(C) Section 24(b)(3)(B), as amended by this Act, is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(D) Section 25(e)(1)(C), as amended by this Act, is amended by inserting ''25E,'' after ''25D,''.

(E) Section 25B(g)(2), as amended by this Act, is amended by striking ''23, 25C, and 25D'' and inserting ''23, 25C, 25D, and 25E''.

(F) Section 26(a)(1), as amended by this Act, is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(G) Section 904(h), as amended by this Act, is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(H) Section 1400C(d), as amended by this Act, is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting '', 25E,'' after ''sections 25D''.

(2) Section 25(e)(1)(C), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting ''25E,'' after ''25D,''.

(3) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (33), by striking the period at the end of paragraph (34) and inserting ''; and'', and by adding at the end the following new paragraph:

''(35) to the extent provided in section 25E(g), in the case of amounts with respect to which a credit has been allowed under section 25E.''.

(4) Section 1400C(d), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by striking ''sections 25C and 25D'' and inserting ''sections 25C, 25D, and 25E''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 25D the following new item:

''Sec. 25E. Qualified duct sealing services and qualified air infiltration reduction services.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to property installed after the date of the enactment of this Act, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

SA 1489. Mr. LAUTENBERG (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title III of Division B, insert the following:

SEC. ___. REPLACEMENT NATURAL GAS OR PROPANE FURNACE OR BOILER.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by this Act, is amended by inserting after section 25D the following new section:

''SEC. 25E. REPLACEMENT NATURAL GAS OR PROPANE FURNACE OR BOILER.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the cost of each replacement natural gas or propane furnace or boiler installed by the taxpayer during the taxable year in a dwelling unit located in the United States and used as a residence by the taxpayer.

''(b) LIMITATIONS.—The credit allowed under subsection (a) for any dwelling unit shall not exceed $300 over the aggregate cost taken into account under subsection (a) with respect to such unit for all preceding taxable years.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) REPLACEMENT NATURAL GAS OR PROPANE FURNACE OR BOILER.—

''(1) IN GENERAL.—For purposes of this section, the term 'replacement natural gas furnace or boiler' means a natural gas or propane furnace or boiler which achieves at least 90 percent annual fuel utilization efficiency (AFUE) and replaces an existing natural gas or propane furnace or boiler which has an AFUE of less than 78 percent or which does not include a power burner or induced draft exhaust.

''(2) LABOR COSTS.—Labor costs properly allocable to the onsite preparation, assembly, or original installation of a replacement natural gas or propane furnace or boiler and for piping or wiring to interconnect such natural gas or propane furnace or boiler to the dwelling unit shall be taken into account for purposes of this section.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—No credit shall be allowed under subsection (a) to the extent that the property is paid for by subsidized energy financing (as defined in section 48(a)(5)(C)).

''(2) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(3) BASIS ADJUSTMENTS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed.

''(4) JOINT OCCUPANCY, HOUSING COOPERATIVES, ETC.—Rules similar to the rules of paragraphs (1), (2), (3), and (5) of section 25C(e) shall apply.

''(f) TERMINATION.—The credit allowed under this section shall not apply to replacement natural gas or propane furnaces or boilers installed after December 31, 2005.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25E(b), as added by subsection (a), is amended—

(A) by striking ''The credit'' and inserting the following:

''(1) DOLLAR AMOUNT.—The credit'', and

(B) by adding at the end the following new paragraph:

''(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25E(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)'' and inserting ''subsection (b)(2)''.

(B) Section 23(b)(4)(B), as amended by this Act, is amended by striking ''sections 25C and 25D'' and inserting ''sections 25C, 25D, and 25E''.

(C) Section 24(b)(3)(B), as amended by this Act, is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(D) Section 25(e)(1)(C), as amended by this Act, is amended by inserting ''25E,'' after ''25D,''.

(E) Section 25B(g)(2), as amended by this Act, is amended by striking ''23, 25C, and 25D'' and inserting ''23, 25C, 25D, and 25E''.

(F) Section 26(a)(1), as amended by this Act, is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(G) Section 904(h), as amended by this Act, is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(H) Section 1400C(d), as amended by this Act, is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting '', 25E,'' after ''sections 25D''.

(2) Section 25(e)(1)(C), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting ''25E,'' after ''25D,''.

(3) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (33), by striking the period at the end of paragraph (34) and inserting ''; and'', and by adding at the end the following new paragraph:

''(35) to the extent provided in section 25E(e)(3), in the case of amounts with respect to which a credit has been allowed under section 25E.''.

(4) Section 1400C(d), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by striking ''sections 25C and 25D'' and inserting ''sections 25C, 25D, and 25E''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 25D the following new item:

''Sec. 25E. Replacement natural gas or propane furnace or boiler.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to property installed after the date of the enactment of this Act, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

SA 1490. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

In division B, beginning on page 220, line 21, strike all through page 221, line 2, and insert the following:

(c) EXTENSION AND EXPANSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.—

(1) EXTENSION.—Section 29(f)(2) (relating to application of section) is amended by inserting ''(January 1, 2007, in the case of any coke, coke gas, or natural gas and byproducts produced by coal gasification from lignite in a facility described in paragraph (1)(B))'' after ''January 1, 2003''.

(2) TRANSFERABILITY OF CREDIT.—Section 29, as amended by subsection (a), is amended by adding the end the following new subsection;

''(i) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(1) ALLOWANCE OF CREDIT.—

''(A) IN GENERAL.—Any credit allowable under subsection (a) with respect to any natural gas and byproducts produced by coal gasification from lignite in a facility described in paragraph (1)(B) owned by a person described in subparagraph (B) may be transferred or used as provided in this subsection and the determination as whether the credit allowable shall be made without regard to the tax-exempt status of the person.''.

''(B) PERSONS DESCRIBED.—A person is described in this subparagraph if the person is—

''(i) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(ii) an organization described in section 1381(a)(2)(C) or subsidiaries of such organization,

''(iii) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(iv) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

''(v) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

''(2) TRANSFER OF CREDIT.—

''(A) IN GENERAL.—A person described in paragraph (1)(B) may transfer any credit to

which paragraph (1)(A) applies through an assignment to any other person not described in paragraph (1)(B). Such transfer may be revoked only with the consent of the Secretary.

''(B) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in subparagraph (a) is assigned once and not reassigned by such other person.

''(C) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in clause (iii), (iv), or (v) of paragraph (1)(B) from the transfer of any credit under subparagraph (A) shall be treated as arising from the exercise of an essential government function.

''(3) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in clause (i), (ii), or (v) of paragraph (1)(B), any credit to which paragraph (1)(A) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003.

''(4) CREDIT NOT INCOME.—Any transfer under paragraph (2) or use under paragraph (3) of any credit to which paragraph (1)(A) applies shall not be treated as income for purposes of this title.

''(5) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(A), sales of qualified fuels among and between persons described in paragraph (1)(B) shall be treated as sales between unrelated parties.''.

SA 1491. Mr. CONRAD submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II of division B, insert the following:

SEC. 210. CREDIT FOR QUALIFYING POLLUTION CONTROL EQUIPMENT.

(a) ALLOWANCE OF QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.—Section 46 (relating to amount of credit), as amended by this Act, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting '', and'', and by adding at the end the following new paragraph:

''(5) the qualifying pollution control equipment credit.''.

(b) AMOUNT OF QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit), as amended by this Act, is amended by inserting after section 48A the following new section:

''SEC. 48B. QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying pollution control equipment credit for any taxable year is an amount equal to 15 percent of the basis of the qualifying pollution control equipment placed in service at a qualifying facility during such taxable year.

''(b) QUALIFYING POLLUTION CONTROL EQUIPMENT.—For purposes of this section, the term 'qualifying pollution control equipment' means any technology installed in or on a qualifying facility to reduce air emissions of any pollutant regulated by the Environmental Protection Agency under the Clean Air Act, including thermal oxidizers, regenerative thermal oxidizers, scrubber systems, evaporative control systems, vapor recovery systems, flair systems, bag houses, cyclones, continuous emissions monitoring systems, and low nitric oxide burners.

''(c) QUALIFYING FACILITY.—For purposes of this section, the term 'qualifying facility' means any facility the exclusive use of which is for the production of ethanol.

''(d) SPECIAL RULE FOR CERTAIN SUBSIDIZED PROPERTY.—Rules similar to section 48(a)(6) shall apply for purposes of this section.

''(e) CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.''.

(c) SPECIAL RULE FOR BASIS REDUCTION; RECAPTURE OF CREDIT.—Paragraph (3) of section 50(c) (relating to basis adjustment to investment credit property) is amended by inserting ''or qualifying pollution control equipment credit'' after ''reforestation credit''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2001, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SA 1492. Mr. DURBIN (for himself and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___ CONSUMER AND SMALL BUSINESS ENERGY COMMISSION.

(a) FINDINGS.—Congress finds that—

(1) there have been several sharp increases since 1990 in the price of electricity, gasoline, home heating oil, natural gas, and propane in the United States;

(2) recent examples of such increases include—

(A) unusually high gasoline prices that are at least partly attributable to global politics;

(B) electricity price spikes during the California energy crisis of 2001; and

(C) the Midwest gasoline price spikes in spring 2001;

(3) shifts in energy regulation, including the allowance of greater flexibility in competition and trading, have affected price stability and consumers in ways that are not fully understood;

(4) price spikes undermine the ability of low-income families, the elderly, and small businesses (including farmers and other agricultural producers) to afford essential energy services and products;

(5) energy price spikes can exacerbate a weak economy by creating uncertainties that discourage investment, growth, and other activities that contribute to a strong economy;

(6) the Department of Energy has determined that the economy would be likely to perform better with stable or predictable energy prices;

(7) price spikes can be caused by many factors, including insufficient inventories, supply disruptions, refinery capacity limits, insufficient infrastructure, over-regulation or under-regulation, flawed deregulation, excessive consumption, over-reliance on foreign supplies, insufficient research and development of alternative energy sources, opportunistic behavior by energy companies, and abuses of market power;

(8) consumers and small businesses have few options other than to pay higher energy costs when prices spike, resulting in reduced investment and slower economic growth and job creation;

(9) the effect of price spikes, and possible responses to price spikes, on consumers and small businesses should be examined; and

(10) studies have examined price spikes of specific energy products in specific contexts or for specific reasons, but no study has examined price spikes comprehensively with a focus on the impacts on consumers and small businesses.

(b) DEFINITIONS.—In this section:

(1) COMMISSION.—The term ''Commission'' means the Consumer and Small Business Energy Commission established by subsection (c)(1).

(2) CONSUMER ENERGY PRODUCT.—The term ''consumer energy product'' means—

(A) electricity;

(B) gasoline;

(C) home heating oil;

(D) natural gas; and

(E) propane.

(3) CONSUMER GROUP FOCUSING ON ENERGY ISSUES.—The term ''consumer group focusing on energy issues'' means—

(A) an organization that is a member of the National Association of State Utility Consumer Advocates;

(B) a nongovernmental organization representing the interests of residential energy consumers; and

(C) a nongovernmental organization that—

(i) receives not more than ¼ of its funding from energy industries; and

(ii) represent the interests of energy consumers.

(4) ENERGY CONSUMER.—The term ''energy consumer'' means an individual or small business that purchases 1 or more consumer energy products.

(5) ENERGY INDUSTRY.—The term ''energy industry'' means for-profit or not-for-profit entities involved in the generation, selling, or buying of any energy-producing fuel involved in the production or use of consumer energy products.

(6) EXECUTIVE COMMITTEE.—The term ''Executive Committee'' means the executive committee of the Commission.

(7) SMALL BUSINESS.—The term ''small business'' has the meaning given the term ''small business concern'' in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(c) CONSUMER ENERGY COMMISSION.—

(1) ESTABLISHMENT.—There is established a commission to be known as the ''Consumer and Small Business Energy Commission''.

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Commission shall be comprised of 20 members.

(B) APPOINTMENTS BY THE SENATE AND HOUSE OF REPRESENTATIVES.—The majority leader and minority leader of the Senate and the Speaker and minority leader of the House of Representatives shall each appoint 4 members, of whom—

(i) 2 shall represent consumer groups focusing on energy issues;

(ii) 1 shall represent small businesses; and

(iii) 1 shall represent the energy industry.

(C) APPOINTMENTS BY THE PRESIDENT.—The President shall appoint 1 member from each of—

(i) the Energy Information Administration of the Department of Energy;

(ii) the Federal Energy Regulatory Commission;

(iii) the Federal Trade Commission; and

(iv) the Commodities Future Trading Commission.

(D) DATE OF APPOINTMENTS.—The appointment of a member of the Commission shall be made not later than 30 days after the date of enactment of this Act.

(3) TERM.—A member shall be appointed for the life of the Commission.

(4) INITIAL MEETING.—The Commission shall hold the initial meeting of the Commission not later than the earlier of—

(A) the date that is 30 days after the date on which all members of the Commission have been appointed; or

(B) the date that is 90 days after the date of enactment of this Act, regardless of whether all members have been appointed.

(5) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall select a Chairperson and Vice Chairperson from among the members of the Commission, excluding the members appointed under clauses (ii), (iii), and (iv) of paragraph (2)(C).

(6) EXECUTIVE COMMITTEE.—The Commission shall have an executive committee comprised of all members of the Commission except the members appointed under clauses (ii), (iii), and (iv) of paragraph (2)(C).

(7) INFORMATION AND ADMINISTRATIVE EXPENSES.—The Federal agencies specified in paragraph (2)(C) shall provide the Commission such information and pay such administrative expenses as the Commission requires to carry out this section, consistent with the requirements and guidelines of the Federal Advisory Commission Act (5 U.S.C. App.).

(8) DUTIES.—

(A) STUDY.—

(i) IN GENERAL.—The Commission shall conduct a nationwide study of significant price spikes in major United States consumer energy products since 1990.

(ii) MATTERS TO BE STUDIED BY THE COMMISSION.—In conducting the study, the Commission shall—

(I) focus on the causes of the price spikes, including insufficient inventories, supply disruptions, refinery capacity limits, insufficient infrastructure, any over-regulation or under-regulation, flawed deregulation, excessive consumption, over-reliance on foreign supplies, insufficient research and development of alternative energy sources, opportunistic behavior by energy companies, and abuses of market power;

(II) examine the effects of price spikes on consumers and small businesses;

(III) investigate market concentration, opportunities for misuse of market power, and any other relevant market failures; and

(IV) consider—

(aa) proposals for administrative actions to mitigate price spikes affecting consumers and small businesses;

(bb) proposals for legislative action; and

(cc) proposals for voluntary actions by energy consumers and the energy industry.

(B) REPORT.—Not later than 270 days after the date of enactment of this Act, the Executive Committee shall submit to Congress a report that contains—

(i) a detailed statement of the findings and conclusions of the Commission; and

(ii) recommendations for legislation, administrative actions, and voluntary actions by energy consumers and the energy industry to protect consumers from future price spikes in consumer energy products, including a recommendation on whether energy consumers need an advocate on energy issues within the Federal Government.

(9) TERMINATION.—

(A) DEFINITION OF LEGISLATIVE DAY.—In this subsection, the term ''legislative day'' means a day on which both Houses of Congress are in session.

(B) DATE OF TERMINATION.—The Commission shall terminate on the date that is 30 legislative days after the date of submission of the report under paragraph (8)(B).

SA 1493. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 153, strike lines 13 and 14 and insert the following:

''(B) uses an input of at least 75 percent coal to produce 50 percent or more of its thermal output as electricity,

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SA 1494. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 157, strike line 22 and all that follows through page 158, line 2, and insert the following:

(2) The term ''renewable energy'' means—

(A) electric energy generated from a solar, wind, biomass, geothermal, or municipal solid waste source;

(B) new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project; and

(C) hydroelectric energy generated at a hydroelectric facility that—

(i) is constructed and operated under an order of the Federal Energy Regulatory Commission issued before January 1, 2003;

(ii) is located at a federally owned dam; and

(iii) is placed in service on or after the date of enactment of this Act.

SA 1495. Mr. ROCKEFELLER (for himself and Mr. SANTORUM) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 218 of Division B, after line 23, insert the following:

''(6) FACILITIES PRODUCING COKE.—

''(A) IN GENERAL.—In the case of a facility described in subparagraph (C) for producing coke which was placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such facility before the close of the 5-year period beginning on the date such facility is placed in service.

''(B) COKE.—For purposes of this paragraph, the term 'coke' means the residue from the destructive distillation of coal in coke ovens.

''(C) COVERED FACILITIES.—A facility is described in this paragraph if such facility qualifies as a new source under section 112 of the Clean Air Act (42 U.S.C. 7412).

On page 219, line 1, strike ''(6)'' and insert ''(7)''.

SA 1496. Mr. HARKIN submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII of division B, insert the following:

SEC. ___. OFFSET OF PASSIVE ACTIVITY LOSSES AND CREDITS OF AN ELIGIBLE TAXPAYER FROM WIND ENERGY FACILITIES.

(a) IN GENERAL.—Section 469 (relating to passive activity losses and credits limited) is amended by redesignating subsections (l) and (m) as subsections (m) and (n) and by inserting after subsection (k) the following new subsection:

''(l) OFFSET OF PASSIVE ACTIVITY LOSSES AND CREDITS FROM WIND ENERGY FACILITIES.—

''(1) IN GENERAL.—Subsection (a) shall not apply to the portion of the passive activity loss, or the deduction equivalent (within the meaning of subsection (j)(5)) of the portion of the passive activity credit, for any taxable year which is attributable to all interests of an eligible taxpayer in qualified facilities described in section 45(c)(3)(A).

''(2) ELIGIBLE TAXPAYER.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'eligible taxpayer' means, with respect to any taxable year, a taxpayer the adjusted gross income (taxable income in the case of a corporation) of which does not exceed $1,000,000.

''(B) RULES FOR COMPUTING ADJUSTED GROSS INCOME.—Adjusted gross income shall be computed in the same manner as under subsection (i)(3)(F).

''(C) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single taxpayer for purposes of this paragraph.

''(D) PASS-THRU ENTITIES.—In the case of a pass-thru entity, this paragraph shall be applied at the level of the person to which the credit is allocated by the entity.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to facilities placed in service after the date of the enactment of this Act.

SEC. ___. CREDIT FOR WIND ENERGY FACILITIES OF AN ELIGIBLE TAXPAYER ALLOWED AGAINST MINIMUM TAX.

(a) IN GENERAL.—Section 38(c) (relating to limitation based on amount of tax) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

''(6) SPECIAL RULES FOR WIND ENERGY CREDIT.—

''(A) IN GENERAL.—In the case of the wind energy credit of an eligible taxpayer—

''(i) this section and section 39 shall be applied separately with respect to such credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the tentative minimum tax shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the wind energy credit).

''(B) WIND ENERGY CREDIT.—For purposes of this subsection, the term 'wind energy credit' means the portion of the renewable electric production credit under section 45 determined with respect to a facility using wind to produce electricity.

''(C) ELIGIBLE TAXPAYER.—For purposes of this paragraph, the term 'eligible taxpayer' has the meaning given such term by section 469(l)(2).''

(b) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii), as amended by this Act, subclause (II) of section 38(c)(3)(A)(ii), as amended by this Act, subclause (II) of section 38(c)(4)(A)(ii), as added by this Act, and subclause (II) of section 38(c)(5)(A)(ii), as added by this Act, are each amended by inserting ''or wind energy credit'' after ''natural gas''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 4. APPLICATION OF CREDIT TO COOPERATIVES.

(a) IN GENERAL.—Section 45(e), as redesignated and amended by this Act, (relating to

definitions and special rules) is amended by adding at the end the following new paragraph:

''(9) ALLOCATION OF CREDIT TO SHAREHOLDERS OF COOPERATIVE.—

''(A) ELECTION TO ALLOCATE.—

''(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned pro rata among shareholders of the organization on the basis of the capital contributions of the shareholders to the organization.

''(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to any shareholders under subparagraph (A)—

''(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

''(ii) shall be included in the amount determined under subsection (a) for the taxable year of the shareholder with or within which the taxable year of the organization ends.

''(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(i) such reduction, over

''(ii) the amount not apportioned to such shareholders under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this subpart or subpart A, B, E, or G.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SA 1497. Mr. HARKIN submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I of division B, insert the following:

SEC. . FURTHER MODIFICATIONS TO CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXTENSION OF PLACED IN SERVICE DATE.—

(1) IN GENERAL.—Section 45(c), as amended by this Act, is amended by striking ''January 1, 2007'' each place it appears and inserting ''January 1, 2014''.

(2) BIOMASS.—Paragraph (3)(A)(ii) of section 45(c), as amended by this Act, is amended by striking ''January 1, 2005'' and inserting ''January 1, 2014''.

(b) RESTORATION OF INFLATION ADJUSTMENT.—Section 45(b)(2), as amended by this Act, is amended by striking the last sentence.

(c) CREDIT ALLOWABLE FOR PRODUCTION OF HYDROGEN.—Section 45, as amended by this Act, is amended by inserting at the end the following new subsection:

''(f) HYDROGEN PRODUCED FROM RENEWABLE RESOURCES.—

''(1) IN GENERAL.—In the case of hydrogen produced from qualified energy sources at qualified facilities, subsection (a) shall be applied by substituting 'the hydrogen kilowatt hour equivalent unit' for 'the kilowatt hours of electricity' in paragraph (2).

''(2) HYDROGEN KILOWATT HOUR EQUIVALENT UNIT.—For purposes of this section, the term 'hydrogen kilowatt hour equivalent unit' means each measurement of hydrogen having the Btu equivalent of one kilowatt hour of electricity, as determined by the Secretary in consultation with the Secretary of Energy.''.

(d) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall take effect as if included in the provisions of section 101 to which they relate.

(2) SUBSECTION (b).—The amendments made by subsections (b) and (c) shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall apply to hydrogen produced and sold after December 31, 2004, in taxable years ending after such date.

SA 1498. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title IX, add the following:

SEC. 9___. FEDERAL GOVERNMENT GREENHOUSE GAS EMISSIONS GOAL.

(a) ACTIONS.—Not later than January 1, 2004, the President shall take such actions as are necessary, including preparing and submitting to Congress any necessary statutory changes, to reduce the net greenhouse gas emissions of the Federal Government to 1990 levels by 2013, including steps to procure—

(1) only highly energy-efficient products, services, and facilities;

(2) electricity generated from renewable sources; and

(3) alternative fuel vehicles.

(b) REPORT.—The President shall direct the appropriate Federal agencies to study and submit to Congress, not later than July 1, 2005, a report on the most cost-effective policy options through which the Federal Government could reduce the net greenhouse gas emissions of the Federal Government to zero by 2025.

SA 1499. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 372, between lines 4 and 5, insert the following:

SEC. 97 . GLOBAL CLIMATE CHANGE RESEARCH AND DEVELOPMENT.

No later than July 1, 2004, the Chairman of the Council on Environmental Quality, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Administrator of the National Aeronautic and Space Administration, and representatives of States, academic institutions, environmental groups, and the public, shall submit to Congress a report that includes—

(1) a definition of the term ''dangerous anthropogenic interference with the climate system'', as used in the United Nations Framework Convention on Climate Change; and

(2) a description of each of the specific elements of the global climate change research and development activities of the United States that are directed at detecting and averting that interference.

SA 1500. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title IX, add the following:

SEC. 9 . CLIMATE CHANGE IN ENVIRONMENTAL IMPACT STATEMENTS.

In any case in which a Federal agency prepares an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Federal agency shall consider and evaluate—

(1) the impact that the Federal action or project necessitating the statement or analysis will have in terms of net changes in greenhouse gas emissions; and

(2) how climate changes may affect the action or project in the short term and the long term.

SA 1501. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title IX, add the following:

SEC. 9 . GRANTS FOR REDUCTION OF GREENHOUSE GAS EMISSIONS.

(a) IN GENERAL.—The President, acting through the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, may provide grants to States or local governments for the purpose of—

(1) preparing, completing, or operating greenhouse gas data collection, inventory, or trading systems;

(2) implementing greenhouse gas emission reduction or sequestration projects, including programs conducted jointly with industry or nonprofit organizations; and

(3) conducting research, long-term planning, and modeling efforts intended to reduce net greenhouse gas emissions in the United States through sustainable economic development.

(b) SET ASIDE FOR MOST EFFECTIVE PROJECTS.—For each fiscal year, 50 percent of the grant funds awarded under subsection (a) shall be awarded competitively for projects that will reduce net greenhouse gas emissions—

(1) in the greatest quantity;

(2) most rapidly; and

(3) with the greatest degree of permanence.

(c) ANNUAL REPORTING BY GRANT RECIPIENTS.—As a condition of receipt of a grant under this section, each recipient shall submit to the Federal agency that provided the grant an annual report on the extent to which the emission reductions that were anticipated in the application for the grant have occurred.

(d) ANNUAL SUMMARY.—The President shall annually compile and publish in the Federal Register a summary of—

(1) the grants made under this section; and

(2) the net emission reductions due to the activities assisted with the grants.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $2,000,000,000 for each fiscal year.

SA 1502. Mr. JEFFORDS submitted an amendment intended to be proposed

by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—GREENHOUSE GAS EMISSIONS

SEC. ___01. SHORT TITLE.

This title may be cited as the ''National Greenhouse Gas Emissions Inventory and Registry Act of 2003''.

SEC. ___02. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) human activities have caused rapid increases in atmospheric concentrations of carbon dioxide and other greenhouse gases in the last century;

(2) according to the Intergovernmental Panel on Climate Change and the National Research Council—

(A) the Earth has warmed in the last century; and

(B) the majority of the observed warming is attributable to human activities;

(3) despite the fact that many uncertainties in climate science remain, the potential impacts from human-induced climate change pose a substantial risk that should be managed in a responsible manner; and

(4) to begin to manage climate change risks, public and private entities will need a comprehensive, accurate inventory, registry, and information system of the sources and quantities of United States greenhouse gas emissions.

(b) PURPOSE.—The purpose of this title is to establish a mandatory greenhouse gas inventory, registry, and information system that—

(1) is complete, consistent, transparent, and accurate;

(2) will create accurate data that can be used by public and private entities to design efficient and effective greenhouse gas emission reduction strategies;

(3) will encourage greenhouse gas emission reductions; and

(4) can be used to establish a baseline in the event of any future greenhouse gas emission reduction requirements affecting major emitters in the United States.

SEC. ___03. GREENHOUSE GAS EMISSIONS.

The Clean Air Act (42 U.S.C. 1701 et seq.) is amended by adding at the end the following:

''TITLE VII—GREENHOUSE GAS EMISSIONS

''SEC. 701. DEFINITIONS.

''In this title:

''(1) COVERED ENTITY.—The term 'covered entity' means an entity that emits more than a threshold quantity of greenhouse gas emissions.

''(2) DIRECT EMISSIONS.—The term 'direct emissions' means greenhouse gas emissions from a source that is owned or controlled by an entity.

''(3) ENTITY.—The term 'entity' includes a firm, a corporation, an association, a partnership, and a Federal agency.

''(4) GREENHOUSE GAS.—The term 'greenhouse gas' means—

''(A) carbon dioxide;

''(B) methane;

''(C) nitrous oxide;

''(D) hydrofluorocarbons;

''(E) perfluorocarbons; and

''(F) sulfur hexafluoride.

''(5) GREENHOUSE GAS EMISSIONS.—The term 'greenhouse gas emissions' means emissions of a greenhouse gas, including—

''(A) stationary combustion source emissions, which are emitted as a result of combustion of fuels in stationary equipment such as boilers, furnaces, burners, turbines, heaters, incinerators, engines, flares, and other similar sources;

''(B) process emissions, which consist of emissions from chemical or physical processes other than combustion;

''(C) fugitive emissions, which consist of intentional and unintentional emissions from—

''(i) equipment leaks such as joints, seals, packing, and gaskets; and

''(ii) piles, pits, cooling towers, and other similar sources; and

''(D) mobile source emissions, which are emitted as a result of combustion of fuels in transportation equipment such as automobiles, trucks, trains, airplanes, and vessels.

''(6) GREENHOUSE GAS EMISSIONS RECORD.—The term 'greenhouse gas emissions record' means all of the historical greenhouse gas emissions and project reduction data submitted by an entity under this title, including any adjustments to such data under section 704(c).

''(7) GREENHOUSE GAS REPORT.—The term 'greenhouse gas report' means an annual list of the greenhouse gas emissions of an entity and the sources of those emissions.

''(8) INDIRECT EMISSIONS.—The term 'indirect emissions' means greenhouse gas emissions that are a consequence of the activities of an entity but that are emitted from sources owned or controlled by another entity.

''(9) NATIONAL GREENHOUSE GAS EMISSIONS INFORMATION SYSTEM.—The term 'national greenhouse gas emissions information system' means the information system established under section 702(a).

''(10) NATIONAL GREENHOUSE GAS EMISSIONS INVENTORY.—The term 'national greenhouse gas emissions inventory' means the national inventory of greenhouse gas emissions established under section 705.

''(11) NATIONAL GREENHOUSE GAS REGISTRY.—The term 'national greenhouse gas registry' means the national greenhouse gas registry established under section 703(a).

''(12) PROJECT REDUCTION.—The term 'project reduction' means—

''(A) a greenhouse gas emission reduction achieved by carrying out a greenhouse gas emission reduction project; and

''(B) sequestration achieved by carrying out a sequestration project.

''(13) REPORTING ENTITY.—The term 'reporting entity' means an entity that reports to the Administrator under subsection (a) or (b) of section 704.

''(14) SEQUESTRATION.—The term 'sequestration' means the long-term separation, isolation, or removal of greenhouse gases from the atmosphere, including through a biological or geologic method such as reforestation or an underground reservoir.

''(15) THRESHOLD QUANTITY.—The term 'threshold quantity' means a threshold quantity for mandatory greenhouse gas reporting established by the Administrator under section 704(a)(3).

''(16) VERIFICATION.—The term 'verification' means the objective and independent assessment of whether a greenhouse gas report submitted by a reporting entity accurately reflects the greenhouse gas impact of the reporting entity.

''SEC. 702. NATIONAL GREENHOUSE GAS EMISSIONS INFORMATION SYSTEM.

''(a) ESTABLISHMENT.—In consultation with the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Energy, States, the private sector, and nongovernmental organizations concerned with establishing standards for reporting of greenhouse gas emissions, the Administrator shall establish and administer a national greenhouse gas emissions information system to collect information reported under section 704(a).

''(b) SUBMISSION TO CONGRESS OF DRAFT DESIGN.—Not later than 180 days after the date of enactment of this title, the Administrator shall submit to Congress a draft design of the national greenhouse gas emissions information system.

''(c) AVAILABILITY OF DATA TO THE PUBLIC.—The Administrator shall publish all information in the national greenhouse gas emissions information system through the website of the Environmental Protection Agency, except in any case in which publishing the information would reveal a trade secret or disclose information vital to national security.

''(d) RELATIONSHIP TO OTHER GREENHOUSE GAS REGISTRIES.—To the extent practicable, the Administrator shall ensure coordination between the national greenhouse gas emissions information system and existing and developing Federal, regional, and State greenhouse gas registries.

''(e) INTEGRATION WITH OTHER ENVIRONMENTAL INFORMATION.—To the extent practicable, the Administrator shall integrate information in the national greenhouse gas emissions information system with other environmental information managed by the Administrator.

''SEC. 703. NATIONAL GREENHOUSE GAS REGISTRY.

''(a) ESTABLISHMENT.—In consultation with the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Energy, States, the private sector, and nongovernmental organizations concerned with establishing standards for reporting of greenhouse gas emissions, the Administrator shall establish and administer a national greenhouse gas registry to collect information reported under section 704(b).

''(b) AVAILABILITY OF DATA TO THE PUBLIC.—The Administrator shall publish all information in the national greenhouse gas registry through the website of the Environmental Protection Agency, except in any case in which publishing the information would reveal a trade secret or disclose information vital to national security.

''(c) RELATIONSHIP TO OTHER GREENHOUSE GAS REGISTRIES.—To the maximum extent feasible and practicable, the Administrator shall ensure coordination between the national greenhouse gas registry and existing and developing Federal, regional, and State greenhouse gas registries.

''(d) INTEGRATION WITH OTHER ENVIRONMENTAL INFORMATION.—To the maximum extent practicable, the Administrator shall integrate all information in the national greenhouse gas registry with other environmental information collected by the Administrator.

''SEC. 704. REPORTING.

''(a) MANDATORY REPORTING TO NATIONAL GREENHOUSE GAS EMISSIONS INFORMATION SYSTEM.—

''(1) INITIAL REPORTING REQUIREMENTS.—

''(A) IN GENERAL.—Not later than April 30, 2004, in accordance with this paragraph and the regulations promulgated under section 706(e)(1), each covered entity shall submit to the Administrator, for inclusion in the national greenhouse gas emissions information system, the greenhouse gas report of the covered entity with respect to—

''(i) calendar year 2003; and

''(ii) each greenhouse gas emitted by the covered entity in an amount that exceeds the applicable threshold quantity.

''(B) REQUIRED ELEMENTS.—Each greenhouse gas report submitted under subparagraph (A)—

''(i) shall include estimates of direct stationary combustion source emissions;

''(ii) shall express greenhouse gas emissions in metric tons of the carbon dioxide equivalent of each greenhouse gas emitted;

''(iii) shall specify the sources of greenhouse gas emissions that are included in the greenhouse gas report;

''(iv) shall be reported on an entity-wide basis and on a facility-wide basis; and

''(v) to the maximum extent practicable, shall be reported electronically to the Administrator in such form as the Administrator may require.

''(C) METHOD OF REPORTING OF ENTITY-WIDE EMISSIONS.—Under subparagraph (B)(iv), entity-wide emissions shall be reported on the bases of financial control and equity share in a manner consistent with the financial reporting practices of the covered entity.

''(2) FINAL REPORTING REQUIREMENTS.—

''(A) IN GENERAL.—Not later than April 30, 2005, and each April 30 thereafter (except as provided in subparagraph (B)(vii)), in accordance with this paragraph and the regulations promulgated under section 706(e)(2), each covered entity shall submit to the Administrator the greenhouse gas report of the covered entity with respect to—

''(i) the preceding calendar year; and

''(ii) each greenhouse gas emitted by the covered entity in an amount that exceeds the applicable threshold quantity.

''(B) REQUIRED ELEMENTS.—Each greenhouse gas report submitted under subparagraph (A) shall include—

''(i) the required elements specified in paragraph (1);

''(ii) estimates of indirect emissions from imported electricity, heat, and steam;

''(iii) estimates of process emissions described in section 701(5)(B);

''(iv) estimates of fugitive emissions described in section 701(5)(C);

''(v) estimates of mobile source emissions described in section 701(5)(D), in such form as the Administrator may require;

''(vi) in the case of a covered entity that is a forest product entity, estimates of direct stationary source emissions, including emissions resulting from combustion of biomass;

''(vii) in the case of a covered entity that owns more than 250,000 acres of timberland, estimates, by State, of the timber and carbon stocks of the covered entity, which estimates shall be updated every 5 years; and

''(viii) a description of any adjustments to the greenhouse gas emissions record of the covered entity under subsection (c).

''(3) ESTABLISHMENT OF THRESHOLD QUANTITIES.—For the purpose of reporting under this subsection, the Administrator shall establish threshold quantities of emissions for each combination of a source and a greenhouse gas that is subject to the mandatory reporting requirements under this subsection.

''(b) VOLUNTARY REPORTING TO NATIONAL GREENHOUSE GAS REGISTRY.—

''(1) IN GENERAL.—Not later than April 30, 2004, and each April 30 thereafter, in accordance with this subsection and the regulations promulgated under section 706(f), an entity may voluntarily report to the Administrator, for inclusion in the national greenhouse gas registry, with respect to the preceding calendar year and any greenhouse gas emitted by the entity—

''(A) project reductions;

''(B) transfers of project reductions to and from any other entity;

''(C) project reductions and transfers of project reductions outside the United States;

''(D) indirect emissions that are not required to be reported under subsection (a)(2)(B)(ii) (such as product transport, waste disposal, product substitution, travel, and employee commuting); and

''(E) product use phase emissions.

''(2) TYPES OF ACTIVITIES.—Under paragraph (1), an entity may report activities that reduce greenhouse gas emissions or sequester a greenhouse gas, including—

''(A) fuel switching;

''(B) energy efficiency improvements;

''(C) use of renewable energy;

''(D) use of combined heat and power systems;

''(E) management of cropland, grassland, and grazing land;

''(F) forestry activities that increase carbon stocks;

''(G) carbon capture and storage;

''(H) methane recovery; and

''(I) carbon offset investments.

''(c) ADJUSTMENT FACTORS.—

''(1) IN GENERAL.—Each reporting entity shall adjust the greenhouse gas emissions record of the reporting entity in accordance with this subsection.

''(2) SIGNIFICANT STRUCTURAL CHANGES.—

''(A) IN GENERAL.—A reporting entity that experiences a significant structural change in the organization of the reporting entity (such as a merger, major acquisition, or divestiture) shall adjust its greenhouse gas emissions record for preceding years so as to maintain year-to-year comparability.

''(B) MID-YEAR CHANGES.—In the case of a reporting entity that experiences a significant structural change described in subparagraph (A) during the middle of a year, the greenhouse gas emissions record of the reporting entity for preceding years shall be adjusted on a pro-rata basis.

''(3) CALCULATION CHANGES AND ERRORS.—The greenhouse gas emissions record of a reporting entity for preceding years shall be adjusted for—

''(A) changes in calculation methodologies; or

''(B) errors that significantly affect the quantity of greenhouse gases in the greenhouse gas emissions record.

''(4) ORGANIZATIONAL GROWTH OR DECLINE.—The greenhouse gas emissions record of a reporting entity for preceding years shall not be adjusted for any organizational growth or decline of the reporting entity such as—

''(A) an increase or decrease in production output;

''(B) a change in product mix;

''(C) a plant closure; and

''(D) the opening of a new plant.

''(5) EXPLANATIONS OF ADJUSTMENTS.—A reporting entity shall explain, in a statement included in the greenhouse gas report of the reporting entity for a year—

''(A) any significant adjustment in the greenhouse gas emissions record of the reporting entity; and

''(B) any significant change between the greenhouse gas emissions record for the preceding year and the greenhouse gas emissions reported for the current year.

''(d) QUANTIFICATION AND VERIFICATION PROTOCOLS AND TOOLS.—

''(1) IN GENERAL.—The Administrator and the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Energy shall jointly work with the States, the private sector, and nongovernmental organizations to develop—

''(A) protocols for quantification and verification of greenhouse gas emissions;

''(B) electronic methods for quantification and reporting of greenhouse gas emissions; and

''(C) greenhouse gas accounting and reporting standards.

''(2) BEST PRACTICES.—The protocols and methods developed under paragraph (1) shall conform, to the maximum extent practicable, to the best practice protocols that have the greatest support of experts in the field.

''(3) INCORPORATION INTO REGULATIONS.—The Administrator shall incorporate the protocols developed under paragraph (1)(A) into the regulations promulgated under section 706.

''(4) OUTREACH PROGRAM.—The Administrator, the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Energy shall jointly conduct an outreach program to provide information to all reporting entities and the public on the protocols and methods developed under this subsection.

''(e) VERIFICATION.—

''(1) PROVISION OF INFORMATION BY REPORTING ENTITIES.—Each reporting entity shall provide information sufficient for the Administrator to verify, in accordance with greenhouse gas accounting and reporting standards developed under subsection (d)(1)(C), that the greenhouse gas report of the reporting entity—

''(A) has been accurately reported; and

''(B) in the case of each project reduction, represents actual reductions in greenhouse gas emissions or actual increases in net sequestration, as applicable.

''(2) INDEPENDENT THIRD-PARTY VERIFICATION.—A reporting entity may—

''(A) obtain independent third-party verification; and

''(B) present the results of the third-party verification to the Administrator for consideration by the Administrator in carrying out paragraph (1).

''(f) ENFORCEMENT.—The Administrator may bring a civil action in United States district court against a covered entity that fails to comply with subsection (a), or a regulation promulgated under section 706(e), to impose a civil penalty of not more than $25,000 for each day that the failure to comply continues.

''SEC. 705. NATIONAL GREENHOUSE GAS EMISSIONS INVENTORY.

''Not later than April 30, 2004, and each April 30 thereafter, the Administrator shall publish a national greenhouse gas emissions inventory that includes—

''(1) comprehensive estimates of the quantity of United States greenhouse gas emissions for the second preceding calendar year, including—

''(A) for each greenhouse gas, an estimate of the quantity of emissions contributed by each key source category;

''(B) a detailed analysis of trends in the quantity, composition, and sources of United States greenhouse gas emissions; and

''(C) a detailed explanation of the methodology used in developing the national greenhouse gas emissions inventory; and

''(2) a detailed analysis of the information reported to the national greenhouse gas emissions information system and the national greenhouse gas registry.

''SEC. 706. REGULATIONS.

''(a) IN GENERAL.—The Administrator may promulgate such regulations as are necessary to carry out this title.

''(b) BEST PRACTICES.—In developing regulations under this section, the Administrator shall seek to leverage leading protocols for the measurement, accounting, reporting, and verification of greenhouse gas emissions.

''(c) NATIONAL GREENHOUSE GAS EMISSIONS INFORMATION SYSTEM.—Not later than January 31, 2004, the Administrator shall promulgate such regulations as are necessary to establish the national greenhouse gas emissions information system.

''(d) NATIONAL GREENHOUSE GAS REGISTRY.—Not later than January 31, 2004, the Administrator shall promulgate such regulations as are necessary to establish the national greenhouse gas registry.

''(e) MANDATORY REPORTING REQUIREMENTS.—

''(1) INITIAL REPORTING REQUIREMENTS.—Not later than January 31, 2004, the Administrator shall promulgate such regulations as are necessary to implement the initial mandatory reporting requirements under section 704(a)(1).

''(2) FINAL REPORTING REQUIREMENTS.—Not later than January 31, 2005, the Administrator shall promulgate such regulations as

are necessary to implement the final mandatory reporting requirements under section 704(a)(2).

''(f) VOLUNTARY REPORTING PROVISIONS.—Not later than January 31, 2004, the Administrator shall promulgate such regulations and issue such guidance as are necessary to implement the voluntary reporting provisions under section 704(b).

''(g) ADJUSTMENT FACTORS.—Not later than January 31, 2004, the Administrator shall promulgate such regulations as are necessary to implement the adjustment factors under section 704(c).''.

SA 1503. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 372, between lines 4 and 5, insert the following:

SEC. 97___. REPORT ON COSTS TO HUMAN HEALTH AND THE ENVIRONMENT OF EXTRACTION, PRODUCTION, CONSUMPTION, AND USE OF PRIMARY ENERGY RESOURCES.

(a) DEFINITIONS.—In this section:

(1) COSTS TO HUMAN HEALTH AND THE ENVIRONMENT.—The term ''costs to human health and the environment'' includes costs of air pollution, global warming, water pollution, toxic contamination, morbidity, and transgenerational effects.

(2) PRIMARY ENERGY RESOURCE.—The term ''primary energy resource'' includes a fossil fuel, nuclear energy, a renewable energy source, and electricity.

(b) REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary of Energy, after consultation with the Administrator of the Environmental Protection Agency, shall enter into an agreement with the National Academy of Sciences under which the Academy shall complete and submit to Congress, not later than 2 years after the date of enactment of this Act, a report that describes and, to the maximum extent practicable, quantifies, the costs to human health and the environment in the United States of the extraction, production, consumption, and use of primary energy resources that, as of the date of enactment of this Act, are not reflected in retail prices paid by consumers for the primary energy resources.

SA 1504. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 327, between lines 14 and 15, insert the following:

SEC. 936. ASSISTANCE FOR ENERGY RESEARCH, ASSESSMENT, AND DEVELOPMENT.

The Secretary of Energy shall provide $3,500,000 for fiscal year 2004 and $5,000,000 for each of fiscal years 2005 and 2006, for use in carrying out research, assessment, and development activities (including the procurement of necessary research equipment) relating to—

(1) woody-lignocellulosic biomass;

(2) biotechnically produced and stored hydrogen; and

(3) bioproduct and sustainable industrial chemical research and development.

SA 1505. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title VI, add the following:

SEC. 6___. MANHATTAN PROJECT FOR ENERGY INDEPENDENCE.

(a) FINDINGS.—Congress finds that—

(1) the welfare and security of the United States require that adequate provision be made for activities relating to the development of energy-efficient technologies; and

(2) those activities should be the responsibility of, and should be directed by, an independent establishment exercising control over activities relating to the development and promotion of energy-efficient technologies sponsored by the United States.

(b) PURPOSE.—The purpose of this section is to establish the Energy Efficiency Development Administration to develop technologies to increase energy efficiency and to reduce the demand for energy.

(c) DEFINITIONS.—In this section:

(1) ADMINISTRATION.—The term ''Administration'' means the Energy Efficiency Development Administration established by subsection (d)(1).

(2) ADMINISTRATOR.—The term ''Administrator'' means the head of the Administration appointed under subsection (d)(3)(A).

(3) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the Policy Advisory Committee established by subsection (f)(1)(A).

(4) ENERGY-EFFICIENT TECHNOLOGY ACTIVITY.—

(A) IN GENERAL.—The term ''energy-efficient technology activity'' means an activity that improves the energy efficiency of any sector of the economy, including the transportation, building design, electrical generation, appliance, and power transmission sectors.

(B) INCLUSION.—The term ''energy-efficient technology activity'' includes an activity that produces energy from a sustainable biomass, wind, small-scale hydroelectric, solar, geothermal, or other renewable source.

(d) ENERGY EFFICIENCY DEVELOPMENT ADMINISTRATION.—

(1) ESTABLISHMENT.—There is established as an independent establishment in the executive branch the Energy Efficiency Development Administration.

(2) MISSION.—The mission of the Administration shall be to reduce United States imports of oil by—

(A) 5 percent by 2007;

(B) 20 percent by 2010; and

(C) 50 percent by 2014.

(3) ADMINISTRATOR; DEPUTY ADMINISTRATOR.—

(A) ADMINISTRATOR.—

(i) APPOINTMENT.—The Administration shall be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.

(ii) PAY.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

''Administrator, Energy Efficiency Development Administration.''.

(iii) DUTIES.—The Administrator shall—

(I) exercise all powers and perform all duties of the Administration; and

(II) have authority over all personnel and activities of the Administration.

(iv) LIMITATION ON RULEMAKING AUTHORITY.—The Administrator shall not modify any energy-efficiency standards or related standards in effect on the date of enactment of this Act that would result in the reduction of energy efficiency in any product.

(B) DEPUTY ADMINISTRATOR.—

(i) APPOINTMENT.—There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.

(ii) PAY.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Deputy Administrator, Energy Efficiency Development Administration.''.

(iii) DUTIES.—The Deputy Administrator shall—

(I) supervise the project development and engineering activities of the Administration;

(II) exercise such other powers and perform such duties as the Administrator may prescribe; and

(III) act for, and exercise the powers of, the Administrator during the absence or disability of the Administrator.

(4) TRANSFER OF FUNCTIONS.—

(A) DEFINITION OF FUNCTION.—In this paragraph, the term ''function'' means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(B) TRANSFER OF FUNCTIONS.—

(i) IN GENERAL.—There are transferred to the Administrator—

(I) all functions previously exercised by the Assistant Secretary of Energy for Efficiency and Renewable Energy; and

(II) any authority to promulgate regulations relating to fuel efficiency previously exercised by the Secretary of Transportation.

(ii) INCLUSIONS.—Functions transferred under clause (i) include all real and personal property, personnel funds, and records of the Office of Energy Efficiency and Renewable Energy of the Department of Energy.

(iii) DETERMINATION OF FUNCTIONS.—The Director of the Office of Management and Budget shall determine the functions that are transferred under clause (i).

(C) PRESIDENTIAL TRANSFERS.—

(i) IN GENERAL.—The President, until the date that is 4 years after the date of enactment of this Act, may transfer to the Administrator—

(I) any function of any other department or agency of the United States, or of any officer or organizational entity of any department or agency, that relates primarily to the duties of the Administrator under this section; and

(II) any records, property, personnel, and funds that are necessary to carry out that function.

(ii) REPORTS.—The President shall submit to Congress a report that describes the nature and effect of any transfer made under clause (i).

(D) ABOLISHMENT OF OFFICE.—The Office of Energy Efficiency and Renewable Energy of the Department of Energy is abolished.

(5) DUTIES.—

(A) IN GENERAL.—The Administrator shall—

(i) plan, direct, and conduct energy-efficient technology activities; and

(ii) provide for the widest appropriate dissemination of information concerning the activities of the Administration and the results of those activities.

(B) OBJECTIVES.—The energy-efficient technology activities of the United States carried out from the Administrator or carried out with financial assistance by the Administrator shall be conducted so as to contribute significantly to 1 or more of the following objectives:

(i) Expansion of knowledge about energy-efficient technologies and the use of those technologies.

(ii) Improvement of existing energy-efficient technologies or development of new energy-efficient technologies.

(iii) Identification of mechanisms to introduce energy-efficient technologies into the marketplace.

(iv) Conduct of studies of—

(I) the potential benefits gained, such as environmental protection, increasing energy

independence, and reducing costs to consumers; and

(II) the problems involved in the development and use of energy-efficient technologies.

(v) The most effective use of the scientific resources of the United States, with close cooperation among all interested agencies of the United States so as to avoid duplication of effort, facilities, and equipment.

(e) POWERS.—The Administrator shall—

(1) not later than 180 days after the date of enactment of this Act, submit to Congress a personnel plan for the Administration that—

(A) specifies the initial number and qualifications of employees needed for the Administration;

(B) describes the functions and General Service classification and pay rates of the initial employees; and

(C) specifies how the Administrator will adhere to or deviate from the civil service system;

(2) appoint and fix the compensation of such officers and employees as are necessary to carry out the functions of the Administration;

(3) establish the entrance grade for scientific personnel without previous service in the Federal Government at a level up to 2 grades higher than the grade provided for such personnel in the General Schedule (within the meaning of section 5104 of title 5, United States Code) and fix the compensation of the personnel accordingly, as the Administrator considers necessary to recruit specially qualified scientific, environmental, and industry-related expertise;

(4) acquire, construct, improve, repair, operate, and maintain such laboratories, research and testing sites and facilities, and such other real and personal property or interests in real and personal property, as the Administrator determines to be necessary for the performance of the functions of the Administration;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as are necessary in the performance of the duties of the Administrator with any—

(A) agency or instrumentality of the United States;

(B) State, Territory, or possession;

(C) political subdivision of any State, Territory, or possession; or

(D) person, firm, association, corporation, or educational institution;

(6)(A) with the consent of Federal and other agencies, with or without reimbursement, use the services, equipment, personnel, and facilities of those agencies; and

(B) cooperate with other public and private agencies and instrumentalities in the use of services, equipment, personnel, and facilities; and

(7) establish within the Administration such offices and procedures as the Administrator considers appropriate to provide for the greatest possible coordination of the activities of the Administration with related scientific and other activities of other public and private agencies and organizations.

(f) ORGANIZATIONAL STRUCTURE.—

(1) POLICY ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—There is established in the Administration a Policy Advisory Committee.

(B) MEMBERSHIP.—

(i) COMPOSITION.—The Advisory Committee shall be composed of 12 members, of whom—

(I) 4 members shall be representatives of the energy efficiency and environmental protection community;

(II) 4 members shall be representatives of—

(aa) industries involved in the generation, transmission, or distribution of energy products; or

(bb) the transportation industry; and

(III) 4 members shall be representatives of the scientific and university research community.

(ii) APPOINTMENT.—The Speaker of the House of Representatives, the majority leader of the Senate, the minority leader of the House of Representatives, and the minority leader of the Senate shall each appoint 1 member described in subclauses (I), (II), and (III) of clause (i).

(C) DUTIES.—The Advisory Committee shall—

(i) act as a steering committee for the Administration; and

(ii) formulate a long-term strategy for—

(I) achieving the mission of the Administration under subsection (d)(2); and

(II) identifying energy-efficient technologies and initiatives that—

(aa) have the potential to increase energy efficiency over the long term; and

(bb) should be further explored by the Administration.

(D) STAFF.—The Advisory Committee may appoint not more than 24 employees to assist in carrying out the duties of the Advisory Committee, of whom—

(i) 8 shall report to the members appointed under subparagraph (B)(i)(I);

(ii) 8 shall report to the members appointed under subparagraph (B)(i)(II); and

(iii) 8 shall report to the members appointed under subparagraph (B)(i)(III).

(E) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Advisory Committee.

(2) OFFICE OF ADMINISTRATION.—

(A) ESTABLISHMENT.—There is established in the Administration an Office of Administration.

(B) ASSISTANT DEPUTY ADMINISTRATOR.—The head of the Office of Administration shall be an Assistant Deputy Administrator for Administration, to be appointed by the Administrator.

(C) PUBLIC INFORMATION DIVISION.—

(i) ESTABLISHMENT.—There is established in the Office of Administration a Public Information Division.

(ii) DUTIES.—The Public Information Division shall serve as a liaison between the Administration, the public, and other entities.

(D) ENERGY EFFICIENCY ECONOMICS DIVISION.—

(i) ESTABLISHMENT.—There is established in the Office of Administration an Energy Efficiency Economics Division.

(ii) STAFF.—The Energy Efficiency Economics Division shall be composed of economists and individuals with expertise in energy markets, consumer behavior, and the economic impacts of energy policy

(iii) DUTIES.—The Energy Efficiency Economics Division shall study the effects of existing and proposed energy-efficient technologies on the economy of the United States, with an emphasis on assessing—

(I) the impacts of those technologies on consumers; and

(II) the contributions of those technologies on the economic development of the United States.

(E) INCENTIVES DIVISION.—

(i) ESTABLISHMENT.—There is established in the Office of Administration an Incentives Division.

(ii) DUTIES.—The Incentives Division shall—

(I) conduct a study of economic incentives that would assist the Administration in—

(aa) developing energy-efficient technologies; and

(bb) introducing those technologies into the marketplace; and

(II) submit to Congress a report on the results of the study conducted under subclause (I).

(F) EDUCATION DIVISION.—

(i) ESTABLISHMENT.—There is established in the Office of Administration an Education Division.

(ii) DUTIES.—The Education Division shall provide—

(I) to the public, information concerning—

(aa) how to conserve energy, including—

(AA) what type of products are energy-efficient; and

(BB) where such products may be purchased; and

(bb) the importance of conserving energy; and

(II) provide to building owners, engineers, contractors, and other businesspersons training in energy-efficient technologies.

(G) LEGISLATIVE COUNSEL DIVISION.—There is established in the Office of Administration a Legislative Counsel Division to provide legal assistance to the Administrator.

(3) OFFICE OF POLICY, RESEARCH, AND DEVELOPMENT.—

(A) ESTABLISHMENT.—There is established in the Administration an Office of Policy, Research, and Development to establish the organizational structure of the Administration relating to the project development and engineering activities of the Administration.

(B) ASSISTANT DEPUTY ADMINISTRATOR.—The head of the Office of Policy, Research, and Development shall be an Assistant Deputy Administrator for Policy, Research, and Development, to be appointed by the Administrator.

(C) POWERS.—In establishing the organizational structure under subparagraph (A), the Office of Policy, Research, and Development may—

(i) incorporate a flat organizational structure comprised of project-based teams;

(ii) focus on accelerating the development of energy-efficient technologies during the period from fundamental research to implementation;

(iii) coordinate with the private sector; and

(iv) adopt organizational models used by other Federal agencies conducting advanced research.

(4) OFFICE OF VENTURE CAPITAL.—

(A) ESTABLISHMENT.—There is established in the Administration an Office of Venture Capital.

(B) ASSISTANT DEPUTY ADMINISTRATOR.—The head of the Office of Venture Capital shall be an Assistant Deputy Administrator for Venture Capital, to be appointed by the Administrator.

(C) DUTIES.—The Office of Venture Capital shall—

(i) accept applications from companies requesting financial assistance for energy-efficient technology proposals;

(ii) accept recommendations and input from the Deputy Administrator and the Policy Advisory Committee on applications submitted under clause (i); and

(iii) from among the applications submitted under clause (i), award financial assistance to applicants to carry out the proposals that are most likely to improve energy efficiency.

(g) INITIAL TECHNOLOGY SOLICITATIONS.—

(1) IN GENERAL.—The Administrator may, based on the criteria described in paragraph (2), initiate the development of technologies for—

(A) fuel-efficient tires;

(B) construction of a hydrogen infrastructure;

(C) high-temperature superconducting cable;

(D) improved switches, resistors, capacitors, software and smart meters for electrical transmission systems;

(E) combined heat and power;

(F) micro turbines;

(G) fuel cells;

(H) energy-efficient lighting;

(I) energy efficiency training for building contractors;

(J) retrofitting or rehabilitation of existing structures to incorporate energy-efficient technologies; and

(K) efficient micro-channel heat exchangers.

(2) CRITERIA.—In determining which technologies to develop under paragraph (1), the Administrator shall consider—

(A) the current status of development of the technology;

(B) the potential for widespread use of the technology in commercial markets;

(C) the time and costs of efforts needed to bring the technology to full implementation; and

(D) the potential of the technology to contribute to the goals of the Administration.

(3) REPORT.—As soon as practicable after the date of enactment of this Act, but not later than 1 year after the date of enactment of this Act, the Administrator shall submit to Congress a report that—

(A) assesses the potential for the technologies described in paragraph (1) to contribute to the goals of the Administration; and

(B) describes the plans of the Administration to develop the technologies under paragraph (1).

(h) REPORTS.—

(1) BY THE ADMINISTRATOR.—Semiannually and at such other times as the Administrator considers appropriate, the Administrator shall submit to the President a report that describes the activities and accomplishments of the Administration.

(2) BY THE PRESIDENT.—In January of each year, the President shall submit to Congress a report that includes—

(A) a description of the activities and accomplishments of all agencies of the United States in the field of energy efficiency during the preceding calendar year;

(B) an evaluation of the activities and accomplishments of the Administrator in attaining the objectives of this section; and

(C) such recommendations for additional legislation as the Administrator or the President considers appropriate for the attainment of the objectives described in this section.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $5,000,000,000 for fiscal year 2004;

(2) $6,000,000,000 for fiscal year 2005;

(3) $7,500,000,000 for each of fiscal years 2006 and 2007;

(4) $9,000,000,000 for each of fiscal years 2008 and 2009; and

(5) $10,000,000,000 for each of fiscal years 2010 through 2014.

SA 1506. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title IV, add the following:

SEC. 4___. PLAN FOR TRANSFER OF WESTERN NEW YORK SERVICE CENTER.

Not later than the date that is 1 year after the date of enactment of this Act, the Secretary of Energy shall, in consultation with the President of the New York State Energy Research and Development Authority, develop and submit to Congress a plan for the transfer to the Secretary of Energy of title to, and full responsibility for the possession, transportation, disposal, stewardship, maintenance, and monitoring of, all facilities, property, and radioactive waste at the Western New York Service Center, West Valley, New York.

SA 1507. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 90, between lines 15 and 16, insert the following:

Subtitle D—Preservation of Availability of Natural Gas-Base Liquefiable Hydrocarbon Supplies in Concert With Pipeline Operational Safety and Environmental Protection

SEC. 151. NATURAL GAS LIQUIDS.

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) DEPENDENT INDUSTRY.—

(A) IN GENERAL.—The term ''dependent industry'' means an industry that is dependent on receiving supplies of liquefiable hydrocarbons transported in interstate commerce.

(B) INCLUSIONS.—The term ''dependent industry'' includes—

(i) the petrochemical industry, with respect to ethane and other natural gas-based feedstocks;

(ii) the propane-butane distribution industry, with respect to propane and propane-butane mixes delivered to residential and agricultural users for use in heating; and

(iii) the refining-blending industry, with respect to the manufacture of gasoline and other motor fuels.

(3) LIQUEFIABLE HYDROCARBON.—

(A) IN GENERAL.—The term ''liquefiable hydrocarbon'' means a hydrocarbon in natural gas that is capable of being separated from the natural gas through—

(i) absorption;

(ii) condensation;

(iii) adsorption; or

(iv) any other method of separation used in a natural gas processing or cycling facility.

(B) INCLUSIONS.—The term ''liquefiable hydrocarbon'' includes—

(i) ethane;

(ii) propane;

(iii) butane; and

(iv) a heavier hydrocarbon that is commonly referred to as a condensate, natural gasoline, or liquefied petroleum gas.

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Commission shall promulgate regulations applicable to the transportation of natural gas in interstate commerce that require the extraction from natural gas streams of liquefiable hydrocarbons in quantities that are sufficient—

(A) to protect against the formation of liquids in downstream delivery systems for natural gas that interfere with the safe and efficient operation of those delivery systems; and

(B) to ensure the availability of historical levels of the extracted liquefiable hydrocarbons to dependent industries.

(2) REQUIREMENTS.—The regulations promulgated under this subsection may be structured—

(A) to require the extraction of excess liquefiable hydrocarbons from a natural gas stream before receipt of the natural gas by an interstate transporter of natural gas; or

(B) to permit the extraction to occur at 1 or more processing plants that are located—

(i) on the delivery system for the natural gas; and

(ii) downstream of the point of receipt of the natural gas by the interstate transporter.

(3) PROTECTION FROM ECONOMIC LOSS.—To the maximum extent practicable, the Commission shall, in accordance with regulations promulgated under this subsection, provide for the protection of a transporter of natural gas described in paragraph (2) from any economic loss suffered by the transporter as a result of the requirement that the natural gas stream of the transporter be subject to the extraction of excess liquefiable hydrocarbons described in paragraph (2).

SA 1508. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 165, between lines 14 and 15, insert the following:

SEC. 5___. REINSTATEMENT AND TRANSFER OF THE FEDERAL LICENSE FOR PROJECT NO. 2696.

(a) DEFINITIONS.—

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) TOWN.—The term ''town'' means the town of Stuyvesant, New York, the holder of Federal Energy Regulatory Commission Preliminary Permit No. 11787.

(b) REINSTATEMENT AND TRANSFER.—Notwithstanding section 8 of the Federal Power Act (16 U.S.C. 801) or any other provision of that Act, the Commission shall, not later than 30 days after the date of enactment of this Act—

(1) reinstate the license for Project No. 2696; and

(2) transfer the license to the town.

(c) HYDROELECTRIC INCENTIVES.—Project No. 2696 shall be entitled to the full benefit of any Federal law that—

(1) promotes hydroelectric development; and

(2) that is enacted within 2 years before or after the date of enactment of this Act.

(d) CO-LICENSEE.—Notwithstanding the issuance of a preliminary permit to the town and any consideration of municipal preference, the town may at any time add as a co-licensee to the reinstated license a private or public entity.

(e) PROJECT FINANCING.—The town may receive loans under sections 402 and 403 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2702, 2703) or similar programs for the reimbursement of the costs of any feasibility studies and project costs incurred during the period beginning on January 1, 2001 and ending on December 31, 2006.

(f) ENERGY CREDITS.—Any power produced by the project shall be deemed to be incremental hydropower for purposes of qualifying for energy credits or similar benefits.

SA 1509. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 434, strike lines 6 and 7 and insert the following:

not later than 1 year after the date of enactment of this paragraph.

''(D) NO PRECLUSION OF STATE ACTIVITY.—Nothing in this paragraph precludes a State from establishing incentives to encourage onsite generation of electricity or net metering in addition to the incentives established under this section as of the date of enactment of this paragraph.

''(E) REPORTS.—

''(i) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall complete a report

that assesses the impact that the establishment of a national net metering and generating facility interconnection standard would have on—

''(I) electric generating resource diversity;

''(II) air quality;

''(III) national energy security;

''(IV) transmission system congestion relief; and

''(V) customer alternatives for electricity supply.

''(ii) ANNUAL REPORTS ON STANDARDS.—Not later than 1 year after the date of enactment of this paragraph, and annually thereafter, the Secretary shall submit to Congress a report on State net metering and interconnection standards that—

''(I) compares the State standards with any national standards;

''(II) assesses the compliance of individual utilities with applicable standards; and

''(III) includes a list of preapproved systems and equipment that would be subject to a national net metering and generating facility interconnection standard described in clause (i), taking into consideration State input and all applicable standards of the Department of Energy.''.

SA 1510. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 433, between liens 8 and 9, insert the following:

SEC. 1134. CONNECTION OF STATIONARY FUEL CELLS TO ELECTRICITY GRIDS.

(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary of Energy shall develop and submit to Congress a plan and implementation schedule for the connection of stationary fuel cells to electricity grids throughout the United States.

(b) QUANTITY OF FUEL CELLS.—The plan and implementation schedule shall provide for the connection in accordance with subsection (a) of at least—

(1) 50,000 stationary fuel cells by January 1, 2010; and

(2) 1,000,000 stationary fuel cells by January 1, 2020.

SA 1511. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 90, between lines 15 and 16, insert the following:

Subtitle D—Miscellaneous

SEC. 1___. STRATEGIC PETROLEUM RESERVE DRAWDOWN AUTHORITY

Section 161(d)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6241(d)(2)) is amended—

(1) by striking ''(A) an emergency'' and inserting ''(A)(i) an emergency'';

(2) by striking ''(B) a severe'' and inserting ''(ii) a severe'';

(3) by striking ''(C) such price'' and inserting ''(iii) such price'';

(4) by striking ''economy.'' and inserting ''economy; or''; and

(5) by adding at the end the following:

''(B) there exist severe economic conditions or volatility in the price of petroleum or petroleum products that pose a significant threat to economic stability that could be mitigated by a drawdown and sale of petroleum products from the Strategic Petroleum Reserve.''.

SA 1512. Mr. SCHUMER (for himself and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I, add the following:

Subtitle D—Miscellaneous

SEC. ___. FINGER LAKES NATIONAL FOREST WITHDRAWAL.

All Federal land within the boundary of Finger Lakes National Forest in the State of New York is withdrawn from—

(1) all forms of entry, appropriation, or disposal under the public land laws; and

(2) disposition under all laws relating to oil and gas leasing.

SA 1513. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 466, after line 22, add the following:

Subtitle___—Miscellaneous

SEC. 11___. TRANSMISSION FACILITIES CROSSING STATE BOUNDARIES.

(a) PURPOSE.—The purpose of this section is to provide for the use of completed but unused or underused electric transmission facilities that cross the boundary between 2 States if such use would, without additional construction or significant adverse environmental impact, add electric transfer capability for the benefit of areas that are subject to risk of electricity shortages, outages, or curtailments under reasonably anticipated conditions.

(b) AMENDMENT.—Section 202 of the Federal Power Act (16 U.S.C. 824a) is amended by adding at the end the following:

''(h) UNUSED OR UNDERUSED TRANSMISSION FACILITIES.—

''(1) IN GENERAL.—Notwithstanding any other law, if, not later than 90 days after the date on which a motion is made by the Secretary of Energy or a State for the commercial operation of completed but unused or underused interstate electric transmission facilities, and not less than 30 days after the date on which the Secretary of Energy provides to affected State commissions and regional transmission organizations written notice of the motion, the Secretary of Energy makes the determinations required under paragraph (2), the Secretary of Energy shall by order authorize, in coordination with other regional transmission facilities, such commercial operation.

''(2) DETERMINATIONS.—The Secretary of Energy shall issue an order under paragraph (1) if the Secretary of Energy determines that—

''(A) the unused or underused electric transmission facilities—

''(i) cross the boundary between 2 States; and

''(ii) are in existence on the date of enactment of this subsection;

''(B) no incremental construction is required to make the electric transmission facilities operational;

''(C) the operation of the electric transmission facilities would be unlikely to cause significant adverse environmental impacts;

''(D) affected States, State commissions, and other interested persons have had a reasonable opportunity to raise issues concerning—

''(i) the lack of benefits from the transmission capacity or electric energy to be transmitted; or

''(ii) any potential adverse environmental impacts from such transmission; and

''(E) any issues raised under paragraph (D) have been duly considered and found to be—

''(i) without merit; or

''(ii) without negative weight sufficient to offset the benefits of operating the electric transmission facilities.''.

SA 1514. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 150, between lines 14 and 15, insert the following:

SEC. 443. SENSE OF THE SENATE CONCERNING REGULATIONS REGARDING THE EXPORT OF HIGHLY ENRICHED URANIUM.

(a) FINDINGS.—Congress finds that—

(1) the prevention of the proliferation of weapons-grade or highly enriched uranium has taken on an enhanced level of importance, given that evidence has been clearly and repeatedly presented that terrorist groups and hostile regimes have sought to acquire highly enriched uranium and associated technologies for the purpose of developing nuclear weapons;

(2) terrorist entities do not distinguish between uranium exported for medical use versus other uses when seeking to acquire material for nuclear weapons and radiological dispersal devices;

(3) the terrorist attacks of September 11, 2001, clearly demonstrated that terrorist organizations are capable of carrying out attacks against the United States that are more sophisticated, coordinated, and destructive than was previously thought possible or likely;

(4) a successful terrorist attack against the United States using a nuclear weapon or radiological dispersal device could result in catastrophic loss of life, environmental damage, and economic consequences;

(5) increasing exports, transmissions, and volumes of highly enriched uranium will consequently increase the possibility that such material will be lost, diverted, stolen, or improperly sold;

(6) regulations in effect on the date of enactment of this Act are designed to apply explicitly to materials used in isotope production;

(7) the regulations were promulgated for the purpose of encouraging research reactors and medical isotope producers to switch from highly enriched uranium to low-enriched uranium fuels and targets, thereby decreasing the risk of weapons grade material being lost, diverted, stolen, or improperly sold;

(8) under the regulations, operators of research reactors and medical isotope manufacturers must commit to transitioning from highly enriched uranium to low-enriched uranium in order to continue receiving highly enriched uranium fuel and targets from the United States;

(9) a repeal of the regulations would unnecessarily weaken anti-proliferation efforts and reduce safeguards for highly enriched uranium;

(10) the regulations place access to a reliable and sufficient supply of medical isotopes in no jeopardy;

(11) no foreign isotope producer has been denied a request for exports of highly enriched uranium so long as a producer has agreed to continue cooperating with the requirement to eventually shift to low-enriched uranium;

(12) the regulations have been successful in enticing 3 of Europe's 4 main highly enriched

uranium fueled reactors to pledge that the reactors will be converted to low-enriched uranium, influencing the construction of a new, large low-enriched uranium reactor in France, and influencing facilities in Australia, Indonesia, and Argentina to convert to low-enriched uranium;

(13) without the regulations, foreign isotope producers would likely abandon efforts to convert to low-enriched uranium, thereby increasing the risks associated with proliferation and nuclear terrorism;

(14) in Australia, low-enriched uranium is already used in the production of isotopes, clearly demonstrating that there is no technological barrier to effective low-enriched uranium use; and

(15) there has been growing concern regarding the ability to safeguard highly enriched uranium supplies at medical isotope production facilities and research reactors in more than 50 countries worldwide.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) there is no compelling need to repeal highly enriched uranium export regulations in effect on the date of enactment of this Act;

(2) efforts to repeal the regulations needlessly create an additional threat to the national security of the United States; and

(3) Congress should take no steps to repeal the regulations.

SA 1515. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title VII, add the following:

SEC. 7___. MOTOR VEHICLE TIRES SUPPORTING MAXIMUM FUEL EFFICIENCY.

(a) STANDARDS FOR TIRES MANUFACTURED FOR INTERSTATE COMMERCE.—Section 30123 of title 49, United States Code, is amended—

(1) in subsection (b), by inserting after the first sentence the following: ''The grading system shall include standards for rating the fuel efficiency of tires designed for use on passenger cars and light trucks.''; and

(2) by adding at the end the following:

''(d) NATIONAL TIRE FUEL EFFICIENCY PROGRAM.—(1) The Secretary shall develop and carry out a national tire fuel efficiency program for tires designed for use on passenger cars and light trucks.

''(2) The program shall include the following:

''(A) Policies and procedures for testing and labeling tires for fuel economy to enable tire buyers to make informed purchasing decisions about the fuel economy of tires.

''(B) Policies and procedures to promote the purchase of energy-efficient replacement tires, including purchase incentives, website listings on the Internet, printed fuel economy guide booklets, and mandatory requirements for tire retailers to provide tire buyers with fuel-efficiency information on tires.

''(C) Minimum fuel economy standards for tires, promulgated by the Secretary.

''(3) The minimum fuel economy standards for tires shall—

''(A) ensure that the fuel economy of replacement tires is equal to or better than the average fuel economy of tires sold as original equipment;

''(B) secure the maximum technically feasible and cost-effective fuel savings;

''(C) not adversely affect tire safety;

''(D) not adversely affect the average tire life of replacement tires;

''(E) incorporate the results from—

''(i) laboratory testing; and

''(ii) to the extent appropriate and available, on-road fleet testing programs conducted by the manufacturers; and

''(F) not adversely affect efforts to manage scrap tires.

''(4) The policies, procedures, and standards developed under paragraph (2) shall apply to all types and models of tires that are covered by the uniform tire quality grading standards under section 575.104 of title 49, Code of Federal Regulations (or any successor regulation).

''(5) Not less often than every three years, the Secretary shall review the minimum fuel economy standards in effect for tires under this subsection and revise the standards as necessary to ensure compliance with requirements under paragraph (3). The Secretary may not, however, reduce the average fuel economy standards applicable to replacement tires.

''(6) Nothing in this chapter shall be construed to preempt any provision of State law relating to higher fuel economy standards applicable to replacement tires designed for use on passenger cars and light trucks.

''(7) Nothing in this chapter shall apply to—

''(A) a tire or group of tires with the same SKU, plant, and year, for which the volume of tires produced or imported is less than 15,000 annually;

''(B) a deep tread, winter-type snow tire, space-saver tire, or temporary use spare tire;

''(C) a tire with a normal rim diameter of 12 inches or less;

''(D) a motorcycle tire; or

''(E) a tire manufactured specifically for use in an off-road motorized recreational vehicle.

''(8) In this subsection, the term 'fuel economy', with respect to tires, means the extent to which the tires contribute to the fuel economy of the motor vehicles on which the tires are mounted.

(b) CONFORMING AMENDMENT.—Section 30103(b) of title 49, United States Code, is amended in paragraph (1) by striking ''When'' and inserting ''Except as provided in section 30123(d) of this title, when''.

(c) TIME FOR IMPLEMENTATION.—The Secretary of Transportation shall ensure that the national tire fuel efficiency program required under subsection (d) of section 30123 of title 49, United States Code (as added by subsection (a)(2)), is administered so as to apply the policies, procedures, and standards developed under paragraph (2) of such subsection (d) beginning not later than March 31, 2006.

SA 1516. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 1432 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in the amendment, strike section 715 and insert the following:

SEC. 715. REDUCTION OF ENGINE IDLING OF HEAVY-DUTY VEHICLES.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ADVANCED TRUCK STOP ELECTRIFICATION SYSTEM.—The term ''advanced truck stop electrification system'' means a stationary and independent electrification system that delivers heat, air conditioning, electricity, communications, and other convenient services, and is capable of providing verifiable and auditable evidence of use of those services, to a heavy-duty vehicle and any occupants of the heavy-duty vehicle without relying on components mounted onboard the heavy-duty vehicle for delivery of those services.

(3) AUXILIARY POWER UNIT.—The term ''auxiliary power unit'' means an integrated system that—

(A) provides heat, air conditioning, engine warming, and electricity to the factory-installed components on a heavy-duty vehicle as if the main drive engine of the heavy-duty vehicle were running; and

(B) is certified by the Administrator of the Environmental Protection Agency under part 89 of title 40, Code of Federal Regulations (or successor regulations), as meeting applicable emission standards.

(4) HEAVY-DUTY VEHICLE.—The term ''heavy-duty vehicle'' means a vehicle that—

(A) has a gross vehicle weight rating greater than 12,500 pounds; and

(B) is powered by a diesel engine.

(5) IDLE REDUCTION TECHNOLOGY.—The term ''idle reduction technology'' means an advanced truck stop electrification system, auxiliary power unit, or another device or system of devices that—

(A) is used to reduce long-duration idling of a heavy-duty vehicle; and

(B) allows for the main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle to be shut down.

(6) LONG-DURATION IDLING.—

(A) IN GENERAL.—The term ''long-duration idling'' means the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle, for a period greater than 15 consecutive minutes, at a time at which the main drive engine is not engaged in gear.

(B) EXCLUSIONS.—The term ''long-duration idling'' does not include the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle during a routine stoppage associated with traffic movement or congestion.

(b) IDLE REDUCTION TECHNOLOGY BENEFITS, PROGRAMS, AND STUDIES.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall—

(A)(i) commence a review of the mobile source air emission models of the Environmental Protection Agency used under the Clean Air Act (42 U.S.C. 7401 et seq.) to determine whether the models accurately reflect the emissions resulting from long-duration idling of heavy-duty vehicles and other vehicles and engines; and

(ii) update those models as the Administrator determines to be appropriate; and

(B)(i) commence a review of the emission reductions achieved by the use of idle reduction technology; and

(ii) complete such revisions of the regulations and guidance of the Environmental Protection Agency as the Administrator determines to be appropriate.

(2) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall—

(A) complete the reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1); and

(B) prepare and make publicly available 1 or more reports on the results of the reviews.

(3) DISCRETIONARY INCLUSIONS.—The reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1) and the reports under paragraph (2)(B) may address the potential fuel savings resulting from use of idle reduction technology.

(4) IDLE REDUCTION DEPLOYMENT PROGRAM.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Administrator, in consultation with the Secretary of Transportation, shall establish a program to support deployment of idle reduction technology that benefits strategic locations based on air quality and congestion considerations.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator such sums as are necessary to carry out subparagraph (A).

(5) IDLING LOCATION STUDY.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Administrator, shall commence a study to analyze all locations at which heavy-duty vehicles stop for long duration idling, including—

(i) truck stops;

(ii) rest areas;

(iii) border crossings;

(iv) ports;

(v) transfer facilities; and

(vi) private terminals.

(B) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(i) complete the study under subparagraph (A); and

(ii) prepare and make publicly available 1 or more reports of the results of the study.

(c) VEHICLE WEIGHT EXEMPTION.—Section 127(a) of title 23, United States Code, is amended—

(1) by designating the first through eleventh sentences as paragraphs (1) through (11), respectively; and

(2) by adding at the end the following:

''(12) HEAVY-DUTY VEHICLES.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), in order to promote reduction of fuel use and emissions due to engine idling, the maximum gross vehicle weight limit and the axle weight limit for any heavy-duty vehicle equipped with an idle reduction technology shall be increased by a quantity necessary to compensate for the additional weight of the idle reduction system.

''(B) MAXIMUM WEIGHT INCREASE.—The weight increase under subparagraph (A) shall be not greater than 250 pounds.

''(C) PROOF.—On request by a regulatory or law enforcement agency, the vehicle operator shall provide proof (through demonstration or certification) that—

''(i) the idle reduction technology is fully functional at all times; and

''(ii) the 250-pound gross weight increase is not used for any purpose other than the use of idle reduction technology described in subparagraph (A).''

SA 1517. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 150, between lines 14 and 15, insert the following:

SEC. 4___. COVERAGE UNDER ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM OF INDIVIDUALS EMPLOYED AT ATOMIC WEAPONS EMPLOYER FACILITY OR BERYLLIUM VENDOR FACILITY DURING PERIOD OF RESIDUAL CONTAMINATION.

(a) ATOMIC WEAPONS EMPLOYEES.—Paragraph (3) of section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l) is amended to read as follows:

''(3) The term 'atomic weapons employee' means an individual employed at an atomic weapons employer facility during a period when—

''(A) the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

''(B) as specified by the National Institute for Occupational Safety and Health in the final report required by section 3151(b)(2)(A)(ii) of the National Defense Authorization Act for Fiscal Year 2002 (42 U.S.C. 7384 note) or any supplement thereto or subsequent report, significant contamination (as that term is defined in section 3151(b)(4)(B) of that Act) resulting from activities described in subparagraph (A) remained after such facility discontinued such activities.''.

(b) BERYLLIUM EMPLOYEES.—Paragraph (7) of that section is amended by adding at the end the following new subparagraph:

''(D) A current or former employee at a facility of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when, as specified by the National Institute for Occupational Safety and Health in the final report required by section 3151(b)(2)(A)(ii) of the National Defense Authorization Act for Fiscal Year 2002 (42 U.S.C. 7384 note) or any supplement thereto or subsequent report, significant contamination (as that term is defined in section 3151(b)(4)(B) of that Act) of beryllium resulting from activities described in subparagraph (C) remained after such facility discontinued such activities.''.

(c) SUPPLEMENTAL REPORTS.—(1) Not later than June 30 of each of 2004, 2005, and 2006, the National Institute for Occupational Safety and Health shall submit to the applicable congressional committees a supplement to the final report required by subsection (b)(2)(A)(ii) of section 3151 of the National Defense Authorization Act for Fiscal Year 2002 (42 U.S.C. 7384 note).

(2) Each supplement under paragraph (1) shall—

(A) for each atomic weapons facility or facility of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, for which more evaluation is required as of the date of such final report to determine the extent of residual contamination at such facility, include the results of any completed study of whether there is significant residual contamination at such facility;

(B) for each atomic weapons facility or facility of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, at which residual contamination remained as of June 30, 2003, according to such final report, identify the date as of which such residual contamination was or will be removed from such facility; and

(C) for each atomic weapons facility or facility of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, for which new information on residual contamination has been made available to the Institute after the submittal of such final report, identify any revisions to the evaluation of residual contamination at such facility set forth in such final report that are warranted in light of such information.

(3) Each supplement under paragraph (1) shall also be made available to the public in paper and electronic form.

(4) In this subsection, the term ''applicable congressional committees'' has the meaning given that term in subsection (b)(2)(B) of section 3151 of the National Defense Authorization Act for Fiscal Year 2002.

SA 1518. Mrs. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—MISCELLANEOUS

SEC. ___. RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.

(a) IN GENERAL.—The Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106–224) is amended—

(1) by redesignating sections 310 and 311 as sections 311 and 312, respectively; and

(2) by inserting after section 309 the following:

''SEC. 310. RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.

''(a) PURPOSES.—The purposes of the programs established under this section are—

''(1) to enhance national energy security through the development, distribution, and implementation of biobased energy technologies;

''(2) to promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies; and

''(3) to promote economic diversification in rural areas of the United States through biobased energy and product technologies.

''(b) DEFINITIONS.—In this section:

''(1) LAND-GRANT COLLEGES AND UNIVERSITIES.—The term 'land-grant colleges and universities' means—

''(A) 1862 Institutions (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601));

''(B) 1890 Institutions (as defined in section 2 of that Act); and

''(C) 1994 Institutions (as defined in section 2 of that Act).

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

''(c) ESTABLISHMENT.—To carry out the purposes described in subsection (a), the Secretary shall establish programs under which—

''(1) the Secretary shall provide grants to sun grant centers specified in subsection (d)(1); and

''(2) the sun grant centers shall use the grants in accordance with this section.

''(d) GRANTS TO CENTERS.—

''(1) IN GENERAL.—The Secretary shall use amounts made available for a fiscal year under subsection (i) to provide a grant to each of the following sun grant centers:

''(A) NORTH-CENTRAL CENTER.—A north-central sun grant center at South Dakota State University for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

''(B) SOUTHEASTERN CENTER.—A southeastern sun grant center at the University of Tennessee at Knoxville for the region composed of—

''(i) the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia;

''(ii) the Commonwealth of Puerto Rico; and

''(iii) the United States Virgin Islands.

''(C) SOUTH-CENTRAL CENTER.—A south-central sun grant center at Oklahoma State University for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

''(D) WESTERN CENTER.—A western sun grant center at Oregon State University for the region composed of—

''(i) the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington; and

''(ii) territories and possessions of the United States (other than the territories referred to in clauses (ii) and (iii) of subparagraph (B)).

''(E) NORTHEASTERN CENTER.—A northeastern sun grant center at Cornell University for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

''(2) EQUAL AMOUNTS.—Of the amount of funds that are made available for grants for a fiscal year under paragraph (1), the Secretary shall provide an equal amount of grants to each of the sun grant centers specified in paragraph (1).

''(e) USE OF FUNDS.—

''(1) CENTERS OF EXCELLENCE.—Of the amount of funds that are made available for a fiscal year to a sun grant center under subsection (d), the center shall use not more than 25 percent of the amount for administration and support centers of excellence in science, engineering, and economics at the university to promote the purposes described in subsection (a) through the State agricultural experiment station, cooperative extension services, and relevant educational programs of the university.

''(2) GRANTS TO LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(A) IN GENERAL.—The sun grant center established for a region shall use the funds that remain available for a fiscal year after expenditures made under paragraph (1) to provide competitive grants to land-grant colleges and universities in the region of the sun grant center to conduct, consistent with the purposes described in subsection (a), multiinstitutional and multistate—

''(i) research, extension, and educational programs on technology development; and

''(ii) integrated research, extension, and educational programs on technology implementation.

''(B) PROGRAMS.—Of the amount of funds that are used to provide grants for a fiscal year under subparagraph (A), the center shall use—

''(i) not less than 20 percent of the funds to carry out programs described in subparagraph (A)(i); and

''(ii) not less than 20 percent of the funds to carry out programs described in subparagraph (A)(ii).

''(3) INDIRECT COSTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a sun grant center may recover the indirect costs of making grants under this subsection.

''(B) OTHER LAND-GRANT COLLEGES AND UNIVERSITIES.—A sun grant center may not recover the indirect costs of making grants under paragraph (2) to other land-grant colleges and universities.

''(f) PLAN.—Subject to the availability of funds under subsection (i), in cooperation with other land-grant colleges and universities and private industry, the sun grant centers shall jointly develop and submit to the Secretary, for approval, a plan for addressing the biomass research priorities of the office of energy efficiency a renewable energy and for the making of grants under paragraphs (1) and (2) of subsection (e) for programs that will facilitate the development of—

''(1) not later than January 1, 2005, critical biobased-based products industries;

''(2) not later than January 1, 2006—

''(A) a biobased transportation fuels production industry; and

''(B) an independent biobased power production industry; and

''(3) not later than January 1, 2007, biobased hydrogen production systems.

''(g) GRANTS TO OTHER LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(1) PRIORITY FOR GRANTS.—In making grants under subsection (e)(2), a sun grant center shall give a higher priority to programs that are consistent with the plan approved by the Secretary under subsection (f).

''(2) TERM OF GRANTS.—The term of a grant provided by a sun grant center under subsection (e)(2) shall not exceed 5 years.

''(3) COORDINATION WITH BIOENERGY AND BIOBASED PRODUCT DEVELOPMENT PROGRAMS.—The sun grant centers shall jointly develop and submit to the Secretary, for approval, a plan for coordination of activities of the centers with, and input from—

''(A) the bioenergy and biobased product development programs of the Secretary of Energy, including those conducted at the Oak Ridge National Laboratory and the National Renewable Energy Laboratory; and

''(B) the biobased research and development programs of the Secretary of Agriculture.

''(h) GRANT INFORMATION ANALYSIS CENTER.—The sun grant centers shall maintain a Sun Grant Information Analysis Center to provide sun grant centers analysis and data management support.

''(i) ANNUAL REPORTS.—Not later than March 1 following the end of each fiscal year for which a sun grant center receives a grant under subsection (d), the sun grant center shall submit to the Secretary a report that describes the policies, priorities, and operations of the program carried out by the center during the fiscal year, including a description of progress made in facilitating the priorities described in subsection (f).

''(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $100,000,000 for each of fiscal years 2004 through 2010, of which $4,000,000 for each fiscal year shall be made available to carry out subsection (h).''.

(b) CONFORMING AMENDMENT.—Subsections (a) and (b) of section 311 of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106–224) (as redesignated by subsection (a)(1)) are amended by inserting ''(other than section 310)'' after ''this title''.

SEC. ___. BIOMASS RESEARCH AND DEVELOPMENT.

(a) BOARD.—Section 305(b) of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106–224) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(2) by inserting after paragraph (2) the following:

''(3) a representative of the Cooperative Research, Extension, and Educational Service;''; and

(3) in paragraph (5) (as redesignated by paragraph (1)), by striking ''(3)'' and inserting ''(4)''.

(b) TECHNICAL ADVISORY COMMITTEE.—Section 306(b)(1) of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106–224) is amended—

(1) in subparagraph (I), by striking ''and'' at the end;

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following:

''(J) a representative of sun grant centers specified in section 310(d)(1); and''.

SA 1519. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 69 strike line 6 and all that follows through line 7, page 70.

SA 1520. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 73, strike line 8 and all that follows through line 7, page 77.

SA 1521. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 864 proposed by Mr. CAMPBELL to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, strike line 11 and all that follows through line 17 and insert:

''(f) EFFECT ON EXISTING LAW.—

''(1) Nothing in this section shall relieve the Secretary of any obligation to conduct environmental or other reviews or take any other actions required of the Secretary as of the date of enactment of this section for activities on tribal lands pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 2901 et seq.); the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); the Endangered Species Act (16 U.S.C. 1531 et seq.); the National Historic Preservation Act (16 U.S.C. 470 et seq.); or any other Federal law for the protection of the environment or environmental quality.

''(2) Nothing in this section affects the application of—

''(A) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.);

''(B) the Atomic Energy Act of 1954 (42 U.S.C. 2011) or any Federal law respecting nuclear or radioactive waste or mining of radioactive materials; or

''(C) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).''

SA 1522. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. . ENERGY EFFICIENCY PERFORMANCE STANDARD.

Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is amended by adding at the end the following:

''SEC. 607. FEDERAL ENERGY EFFICIENCY PERFORMANCE STANDARD.

''(a) Each electric retail supplier shall implement energy efficiency and load reduction programs and measures to achieve verified improvements in energy efficiency and peak load reduction in retail customer facilities and the distribution systems that serve them.

''(b) Such programs shall produce savings in total peak power demand and total electricity use by retail customers by an amount that is equal to or greater than the following

percentages relative to the peak demand and electricity used in that year by the retail electric supplier's customers:

[Amounts in percent]

	Reduction in demand (kW)	Reductions in use (kWh)
In calendar year 2004	1	.75
In calendar year 2005	2	1.5
In calendar year 2007	4	3.0
In calendar year 2009	6	4.5
In calendar year 2011	8	6.9
In calendar year 2013	10	7.5

''(c) For purposes of this section, savings shall be counted only for measures installed after January 1, 2003.

''(d) The Secretary of Energy is directed to establish, by rule, procedures and standards for counting and independently verifying energy and demand savings calculations for purposes of enforcing the energy efficiency performance standards imposed by this section. Such rule shall also include procedures and a schedule of reporting findings to the Department of Energy and for making such reports available to the public. The Secretary shall consult with the association representing the nation's public utility regulators, and with the association representing the nation's state energy officials in developing these procedures and standards. This rulemaking shall be completed no later than June 30, 2004.

''(e) By June 30, 2006, and every two years thereafter, each retail electric supplier shall file with the state public utilities commission in each state in which it supplies service to retail customers, a report demonstrating that it has taken action to comply with the energy efficiency performance standards of this section. These reports shall include independent verification of the estimated savings pursuant to standards established by the Secretary. A state public utilities commission may accept such report as filed, or may review and investigate the accuracy of the report. Each state public utilities commission shall make findings on any deficiencies relative to the requirements in section 2, and shall create a remedial order for the correction of any deficiencies that are found.

''(f) Electric retail suppliers not subject to the jurisdiction of state public utilities commissions shall report to their governing bodies. Such reports shall include independent verification of the estimated savings pursuant to standards established by the Secretary.

''(g) Electric retail suppliers may demonstrate satisfaction of this standard, in whole or part, by savings achieved through participation in statewide, regional, or national programs that can be demonstrated to significantly improve the efficiency of electric distribution and use. Verified efficiency savings resulting from such programs may be assigned to each participating retail supplier based upon their degree of participation in such programs. Electric retail suppliers may also purchase rights to extra savings achieved by other electric retail suppliers, provided that the selling supplier does not also take credit for those savings.

''(h) In the event that any retail electric supplier fails to achieve its energy savings and/or load reduction target for a specific year, any aggrieved party may enter suit and seek prompt remedial action before the state public utilities commission or the appropriate governing body in the case of electric retail suppliers not subject to state public utility commission jurisdiction. The state public utilities commission or other appropriate governing body shall have a maximum of one year to craft a remedy. However, if a public utilities commission or other governing body certifies that it has inadequate resources or authority to promptly resolve enforcement actions under this section, or fails to take action within the time period specified above, enforcement may be sought in Federal district court. If a commission or court determines that energy savings and/or load reduction targets for a specific year have not been achieved, the commission or court shall determine the amount of the deficit and shall fashion an equitable remedy to restore the lost savings as soon as practicable. Such remedies may include a refund to retail electric customers of an amount equal to the average retail rate multiplied by the deficit in kW and/or kWh, and the appointment of a special master to administer a bidding system to procure the energy and demand savings equal to 125% of the deficit.

SA 1523. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDREIU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14 to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 45, after line 7, insert the following:

Subtitle I—System Benefits

SEC. 1192. SYSTEM BENEFITS FUND.

(a) DEFINITIONS.—For purposes of this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) BOARD.—The term ''Board'' means the Board established under this section.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) FUND.—The term ''Fund'' means the System Benefits Trust Fund established by this section.

(5) RENEWABLE ENERGY.—The term ''renewable energy'' means electricity generated from wind, organic waste (excluding incinerated municipal solid waste), or biomass (including anaerobic digestion from farm systems and landfill gas recovery) or a geothermal, solar thermal, or photovoltaic source. For purposes of this paragraph, a farm system is an electric generating facility that generates electric energy from the anaerobic digestion of agricultural waste produced by farming that is located on the farm where substantially all of the waste used is produced.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(b) BOARD.—

(1) ESTABLISHMENT.—The Secretary shall establish a System Benefits Trust Fund Board to carry out the functions and responsibilities described in this section.

(2) MEMBERSHIP.—The Board shall be composed of—

(A) 1 representative of the Federal Energy Regulatory Commission appointed by the Federal Energy Regulatory Commission;

(B) 2 representatives of the Secretary of Energy appointed by the Secretary of Energy;

(C) 2 persons nominated by the National Association of Regulatory Utility Commissions and appointed by the Secretary;

(D) 1 person nominated by the National Association of State Utility Consumer Advocates and appointed by the Secretary;

(E) 1 person nominated by the National Association of State Energy Officials and appointed by the Secretary;

(F) 1 person nominated by the National Energy Assistance Directors' Association and appointed by the Secretary; and

(G) 1 representative of the Environmental Protection Agency appointed by the Administrator.

(3) CHAIRPERSON.—The Secretary shall select a member of the Board to serve as Chairperson of the Board.

(c) ESTABLISHMENT OF FUND.—

(1) IN GENERAL.—The Board shall establish an account or accounts at one or more financial institutions, which account or accounts shall be known as the System Benefits Trust Fund consisting of amounts deposited in the fund under subsection (d).

(2) STATUS OF FUND.—The wires charges collected under subsection (e) and deposited in the Fund—

(A) shall not constitute funds of the United States.

(B) shall be held in trust by the Board solely for the purposes stated in subsection (d); and

(C) shall not be available to meet any obligations of the United States.

(d) USE OF FUND.—

(1) FUNDING OF STATE PROGRAMS.—Amounts in the Fund shall be used by the Board to provide matching funds to States and Indian tribes for the support of State or tribal public benefits programs relating to—

(A) energy conservation and efficiency;

(b) renewable energy sources;

(C) assisting low-income households in meeting their home energy needs; or

(D) research and development in areas described in subparagraphs (A) through (C).

(2) DISTRIBUTION.—

(A) IN GENERAL.—Except for amounts needed to pay costs of the Board in carrying out its duties under this section, the Board shall distribute all amounts in the Fund to States or Indian tribes to fund public benefits programs under paragraph (1).

(B) FUND SHARE.—

(i) IN GENERAL.—Subject to clause (iii), the Fund share of a public benefits program funded under paragraph (1) shall be 50 percent.

(ii) PROPORTIONATE REDUCTION.—To the extent that the amount of matching funds requested by States and Indian tribes exceeds the maximum projected revenues of the Fund, matching funds distributed to the States and Indian tribes shall be reduced by an amount that is proportionate to each State's annual consumption of electricity compared to the Nation's aggregate annual consumption of electricity.

(iii) ADDITIONAL STATE OR INDIAN TRIBE FUNDING.—State or Indian tribe may apply funds to public benefits programs in addition to the amount of funds applied for the purpose of matching the Fund share.

(3) PROGRAM CRITERIA.—The Board shall recommend eligibility criteria for public benefits programs funded under this section for approval by the Secretary of Energy.

(4) APPLICATION.—Not later than August 1 of each year beginning in 2002, a State or Indian tribe seeking matching funds for the following fiscal year shall file with the Board, in such form as the Board may require, an application—

(A) certifying that the funds will be used for an eligible public benefits program;

(B) stating the amount of State or Indian tribe funds earmarked for the program; and

(C) summarizing how System Benefit Trust Fund funds from the previous calendar year (if any) were spent by the State and what the State accomplished as a result of these expenditures.

(e) WIRES CHARGE.—

(1) DETERMINATION OF NEEDED FUNDING.—Not later than August 1 of each year, the Board shall determine and inform the Federal Energy Regulatory Commission of the aggregate amount of wires charges that will be necessary to be paid into the Fund to pay matching funds to States and Indian tribes and pay the operating costs of the Board in the following fiscal year.

(2) IMPOSITION OF WIRES CHARGE.—

(A) IN GENERAL.—Not later than December 15 of each year, the Federal Energy Regulatory Commission shall impose a nonbypassable, competitively neutral wires charge, to be paid directly into the Fund by the operator of the wire, on electricity carried through the wire (measured as it exists the busbar at a generation facility, or, for electricity generated outside the United States, at the point of delivery to the wire operator's system) in interstate commerce.

(B) AMOUNT.—The wires charge shall be set at a rate equal to the lesser of

(i) 2.0 mills per kilowatt hour; or

(ii) a rate that is estimated to result in the collection of an amount of wires charges that is as nearly as possible equal to the amount of needed funding determined under paragraph (1).

(3) DEPOSIT IN THE FUND.—The wires charge shall be paid by the operator of the wire directly into the Fund at the end of each month during the calendar year for distribution by the Board under subsection (c).

(4) PENALTIES.—The Federal Energy Regulatory Commission may assess against a wire operator that fails to pay a wires charge as required by this subsection a civil penalty in an amount equal to not more than the amount of the unpaid wires charge.

(e) AUDITING.—

(1) IN GENERAL.—The Fund shall be audited annually by a firm of independent certified public accountants in accordance with generally accepted auditing standards.

(2) ACCESS TO RECORDS.—Representatives of the Secretary of Energy and the Federal Energy Regulatory Commission shall have access to all books, accounts, reports, files, and other records pertaining to the Fund as necessary to facilitate and verify the audit.

(3) REPORTS.—

(A) IN GENERAL.—A report on each audit shall be submitted to the Secretary of Energy, the Federal Energy Regulatory Commission, and the Secretary of the Treasury, who shall submit the report to the President and Congress not later than 180 days after the close of the fiscal year.

(B) REQUIREMENTS.—An audit report shall—

(i) set forth the scope of the audit; and

(ii) include—

(I) a statement of assets and liabilities, capital, and surplus or deficit;

(II) a surplus or deficit analysis;

(III) a statement of income and expenses;

(IV) any other information that may be considered necessary to keep the President and Congress informed of the operations and financial condition of the Fund; and

(V) any recommendations with respect to the Fund that the Secretary of Energy or the Federal Energy Regulatory Commission may have.

SA 1524. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 165 after line 14 insert:

(d) LICENSE TERMS.—Section 6 and section 101(i) of the Federal Power Act (16 U.S.C. 799 and 803(i) are each amended by striking ''fifty'' and inserting ''thirty'' and section 15(e) of such Act is amended by striking ''not less than 30 years, nor more than 50'' and inserting ''not more than 15.''

SA 1525. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 54 strike line 14 and all that follows through line 24, page 55, and insert:

(b) DESIGNATION OF QUALIFIED STAFF.—The Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the Chief of the Corps of Engineers may assign persons under their employment to each of the field offices identified in subsection (c) upon each making a determination as to such employees that to make such assignments shall not create undue staffing shortages within their respective agencies; that all statutory obligations fulfilled by such employees will continue to be fully met in accordance with existing law; and that no other undue administrative or other burdens shall be created by virtue of such assignments. Employees available for such assignments may include those having expertise in the Endangered Species Act; the Clean Air Act; the Clean Water Act; the National Environmental Policy Act; the National Forest Management Act; or such other expertise as the Administrator of the Environmental Protection Agency, the Secretary of Agriculture or the Chief of the Corps of Engineers may find appropriate for persons within their employment.

(c) FIELD OFFICES.—The following BLM Field Offices shall serve as the Federal Permit Streamlining Pilot Project offices:

(1) Rawlins, Wyoming.
(2) Buffalo, Wyoming;
(3) Miles City, Montana;
(4) Farmington, New Mexico;
(5) Carlsbad, New Mexico;
(6) Glenwood Springs, Colorado.

(d) REPORTS.—The Secretary, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the Chief of the Corps of Engineers shall submit a report to Congress 1 year following the date of enactment of this section, outlining the results of the Pilot Project and including a recommendation to the President as to whether the Pilot Project should be implemented nationwide.

(e) ADDITIONAL PERSONNEL.—The Secretary shall assign to each of the BLM Field Offices listed in subsection (c) such additional personnel of the Department of the Interior as is necessary to ensure the effective implementation of—

SA 1526. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 53 strike line 5 and all that follows through line 22.

SA 1527. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 19 strike Line 7 and all that follows through page 21, line 16, and insert:

(a) ADOPTION OF STANDARD.—At the end of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) add the following:

''TITLE___NET METERING

''SEC. . NET METERING STANDARDS.

''(a) REQUIREMENT TO PROVIDE SERVICE.—Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves in accordance with this section.

''(b) ESTABLISHMENT OF STANDARDS.—Net metering service under this section shall be provided in accordance with the following standards:

''(1) AN ELECTRIC UTILITY.—

''(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

''(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

''(2) An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period in accordance with reasonable metering practices.

''(3) If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with reasonable metering practices.

''(4) If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

''(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

''(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period, with the kilowatt-hour credit appearing on the bill for the following billing period.

''(5) An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electric Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

''(6) The Commission, after consultation with State regulatory authorities and unregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.

(c) DEFINITIONS.—For purposes of this section:

''(1) the term 'eligible on-site generating facility' means a facility on the site of a residential electric consumer with a maximum

generating capacity of 10 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; or a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system.

''(2) The term 'renewable energy resource' means solar, wind, biomass, or geothermal energy.

''(3) The term 'high efficiency system' means fuel cells or combined heat and power.

''(4) The term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.''.

SA 1528. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14 to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 165 after line 14 insert:

(d) ANNUAL LICENSES.—Section 15(a)(1) of the Federal Power Act (16 U.S.C. 808(a)(1)) is amended by adding the following at the end thereof: ''Annual licenses shall contain such terms and conditions appropriate for the duration of the annual license which are identified by the Secretary of the Interior and the Secretary of Agriculture as necessary for the protection and utilization of the reservation within which the project is located; by the Secretary of the Interior and the Secretary of Commerce for the protection and enhancement of fish and wildlife, including related spawning grounds and habitat; and by the Governor of the State in which the project is located for compliance with water standards and other legal requirements for beneficial uses of affected water. The terms of any new license for a project shall be reduced by one year for each annual license issued for such project.''

SA 1529. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 114, add the following:

SEC. . RISK-BASED DATA MANAGEMENT SYSTEMS.

(a) IN GENERAL.—The Secretary of Energy shall make grants to the Ground Water Protection Council to develop risk-based data management systems.

(b) REPORT.—Not later than sixty days after the end of each fiscal year, the Ground Water Protection Council shall report to the Secretary on the progress in developing risk-based data management systems and on any other functions or activities undertaken including the identification of any other individuals or entities that receive secondary grants, using funds provided under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $1,000,000 for fiscal years 2004–2007.

SA 1530. Mr. JEFFORDS (for himself, Mr. KERRY, Mr. REID, Mr. DURBIN, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 467, after line 16, add the following:

Subtitle I—Renewable Portfolio Standard

SEC. 192. RENEWABLE PORTFOLIO STANDARD.

Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is amended by adding at the end the following:

''SEC. 606. FEDERAL RENEWABLE PORTFOLIO STANDARD.

''(a) RENEWABLE ENERGY REQUIREMENTS.—

''(1) IN GENERAL.—For each calendar year beginning in Calendar year 2006, each retail electric supplier shall submit to the Secretary, not later than April 30 of each year, renewable energy credits in an amount equal to the required annual percentage of the retail electric supplier's total amount of kilowatt-hours of non-hydropower (excluding incremental hydropower) electricity sold to retail consumers during the previous calendar year.

''(2) CARRYOVER.—A renewable energy for any year that is not used to satisfy the minimum requirement for that year may be carried over for use within the next two years.

''(b) REQUIRED ANNUAL PERCENTAGE.—Of the total amount of non-hydropower (excluding incremental hydropower) electricity sold by each retail electric supplier during a calendar year, the amount generated by renewable energy sources shall be not less than the percentage specified below:

[In percent]

Calendar years:	Percentage of Renewable energy each year:
2006–2009	5
2010–2014	10
2015–2019	15
2020 and subsequent years	20

''(c) SUBMISSION OF RENEWABLE ENERGY CREDITS.—

''(1) IN GENERAL.—To meet the requirements under subsection (a), a retail electric supplier shall submit to the Secretary either—

''(A) renewable energy credits issued to the retail electric supplier under subsection (e);

''(B) renewable energy credits obtained by purchase or exchange under subsection (f);

''(C) renewable energy credits purchased from the United States under subsection (g); or

''(D) any combination of credits under subsections (e), (f) or (g).

''(2) PROHIBITION ON DOUBLE COUNTING.—A credit may be counted toward compliance with subsection (a) only once.

''(d) RENEWABLE ENERGY CREDIT PROGRAM.—The Secretary shall establish, not later than 1 year after the date of enactment of this Act, a program to issue, monitor the sale or exchange of, and track, renewable energy credits.

''(e) ISSUANCE OF RENEWABLE ENERGY CREDITS.—

''(1) IN GENERAL.—Under the program established in subsection (d), an entity that generates electric energy through the use of a renewable energy resource may apply to the Secretary for the issuance of renewable energy credits.

''(2) APPLICATION.—An application for the issuance of renewable energy credits shall indicate—

''(A) the type of renewable energy resource used to produce the electric energy;

''(B) the State in which the electric energy was produced; and

''(C) any other information the Secretary determines appropriate.

''(3) CREDIT VALUE.—Except as provided in subparagraph (4), the Secretary shall issue to an entity applying under this subsection one renewable energy credit for each kilowatt-hour of renewable energy generated in any State from the date of enactment of this Act and in each subsequent calendar year.

''(4) CREDIT VALUE FOR DISTRIBUTED GENERATION.—The Secretary shall issue three renewable energy credits for each kilowatt-hour of distributed generation.

''(5) VESTING.—A renewable energy credit will vest with the owner of the system or facility that generates the renewable energy unless such owner explicitly transfers the credit.

''(6) CREDIT ELIGIBILITY.—To be eligible for a renewable energy credit, the unit of electricity generated through the use of a renewable energy resource shall be sold for retail consumption or used by the generator. If both a renewable energy resource and a non-renewable energy resource are used to generate the electric energy, the Secretary shall issue renewable energy credits on the proportion of the renewable energy resource used.

''(7) IDENTIFYING CREDITS.—The Secretary shall identify renewable energy credits by the type and date of generation.

''(8) SALE UNDER PURPA CONTRACT.—When a generator sells electric energy generated through the use of a renewable energy resource to a retail electric supplier under a contract subject to section 210 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 824a–3), the retail electric supplier is treated as the generator of the electric energy for the purposes of this Act for the duration of the contracts.

''(f) SALE OR EXCHANGE OF RENEWABLE ENERGY CREDITS.—A renewable energy credit may be sold or exchanged by the entity issued the renewable energy credit or by any other entity that acquires the renewable energy credit. Credits may be sold or exchanged in any manner not in conflict with existing law, including on the spot market or by contractual arrangements of any duration.

''(g) PURCHASE FROM THE UNITED STATES.—The Secretary shall offer renewable energy credits for sale at the lesser of three cents per kilowatt-hour or 110 percent of the average market value of credits for the applicable compliance period. On January 1 of each year following calendar year 2006, the Secretary shall adjust for inflation the price charged per credit for such calendar year.

''(h) STATE PROGRAMS.—Nothing in this section shall preclude any State from requiring additional renewable energy generation in the State under any renewable energy program conducted by the State.

''(i) CONSUMER ALLOCATION.—The rates charged to classes of consumers by a retail electric supplier shall reflect a proportional percentage of the cost of generating or acquiring the required annual percentage of renewable energy under subsection (a). A retail electric supplier shall not represent to any customer or prospective customer that any product contains more than the percentage of eligible resources if the additional amount of eligible resources is being used to satisfy the renewable generation requirement under subsection (a).

''(j) ENFORCEMENT.—A retail electric supplier that does not submit renewable energy credits as required under subsection (a) shall be liable for the payment of a civil penalty. That penalty shall be calculated on the basis of the number of renewable energy credits not submitted, multiplied by the lesser of 4.5 cents or 300 percent of the average market value of credits for the compliance period.

''(k) INFORMATION COLLECTION.—The Secretary may collect the information necessary to verify and audit—

''(1) the annual electric energy generation and renewable energy generation of any entity applying for renewable energy credits under this section;

''(2) the validity of renewable energy credits submitted by a retail electric supplier to the Secretary; and

''(3) the quantity of electricity sales of all retail electric suppliers.

''(l) VOLUNTARY PARTICIPATION.—The Secretary may issue a renewable energy credit pursuant to subsection (e) to any entity not subject to the requirements of this Act only if the entity applying for such credit meets the terms and conditions of this Act to the same extent as entities subject to this Act.

''(m) STATE RENEWABLE ENERGY GRANT PROGRAM.—

''(1) DISTRIBUTION TO STATES.—The Secretary shall distribute amounts received from sales under subsection (g) and from amounts received under subsection (j) to States to be used for the purposes of this section.

''(2) REGIONAL EQUITY PROGRAM.—

''(A) ESTABLISHMENT OF PROGRAM.—Within one year from the date of enactment of this Act, the Secretary shall establish a program to promote renewable energy production and use consistent with the purposes of this section.

''(B) ELIGIBILITY.—The Secretary shall make funds available under this section to State energy agencies for grant programs for—

''(i) renewable energy research and development;

''(ii) loan guarantees to encourage construction of renewable energy facilities;

''(iii) consumer rebate or other programs of offset costs of small residential or small commercial renewable energy systems including solar hot water; or

''(iv) promoting distributed generation.

''(3) ALLOCATION PREFERENCES.—In allocating funds under the program, the Secretary shall give preference to—

''(A) States in regions which have a disproportionately small share of economically sustainable renewable energy generation capacity; and

''(B) State grant programs most likely to stimulate or enhance innovative renewable energy technologies.

''(n) DEFINITIONS.—In this section.

''(1) BIOMASS.—

''(A) IN GENERAL.—The term ''biomass'' means—

''(i) organic material from a plant that is planted for the purpose of being used to produce energy;

''(ii) nonhazardous, cellulosic or agricultural waste material that is segregated from other waste materials and is derived from—

''(I) a forest-related resource, including—

''(aa) mill and harvesting residue;

''(bb) precommercial thinnings;

''(cc) slash; and

''(dd) brush;

''(II) agricultural resources, including—

''(aa) orchard tree crops;

''(bb) vineyards;

''(cc) grains;

''(dd) legumes;

''(ee) sugar; and

''(ff) other crop by-products or residues; or

''(III) miscellaneous waste such as—

''(aa) waste pallet;

''(bb) crate; and

''(cc) landscape or right-of-way tree trimmings;

''(iii) animal waste that is converted to a fuel rather than directly combusted, the residue of which is converted to a biological fertilizer, oil, or activated carbon.

''(B) EXCLUSIONS.—The term 'biomass' shall not include—

''(i) municipal solid waste that is incinerated;

''(ii) recyclable post-consumer waste paper;

''(iii) painted, treated, or pressurized wood;

''(iv) wood contaminated with plastics or metals; or

''(v) tires.

''(2) DISTRIBUTED GENERATION.—The term 'distributed generation' means reduced electricity consumption from the electric grid due to use by a customer of renewable energy generated at a customer site.

''(3) INCREMENTAL HYRDOPOWER.—The term 'incremental hydropower' means additional generation achieved from increased efficiency after January 1, 2003, at a hydroelectric dam that was placed in service before January 1, 2003.

''(4) LANDFILL GAS.—The term 'landfill gas' means gas generated from the decomposition of household solid waste, commercial solid waste, and industrial solid waste disposed of in a municipal solid waste landfill unit (as those terms are defined in regulations promulgated under subtitle D of the Solid Waste Disposal (42 U.S.C. 6941 et seq.)).

''(5) RENEWABLE ENERGY.—The term 'renewable energy' means electricity generated from—

''(A) A renewable energy source; or

''(B) hydrogen that is produced from a renewable energy source.

''(5) THE TERM 'RENEWABLE ENERGY SOURCE' MEANS—

''(A) wind;

''(B) oceans waves;

''(C) biomass;

''(D) solar;

''(E) landfill gas;

''(F) incremental hydropower; or

''(G) geothermal.

''(6) RETAIL ELECTRIC SUPPLIER.—The term 'retail electric supplier' means a person or entity that sells retail electricity to consumers, and which sold not less than 500,000 megawatts of electric energy to consumers for purposes other than resale during the preceding calendar year.

''(7) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

SA 1531. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

In section 32 of the Outer Continental Shelf Lands Act (as added by section 111), strike subsections (c) and (d) and insert the following:

''(c) IMPACT ASSISTANCE PAYMENTS TO STATES AND POLITICAL SUBDIVISIONS.—The Secretary shall make payments from the amounts available under this section to Producing Coastal States with an approved Coastal Impact Assistance Plan, and to coastal political subdivisions as follows:

''(1) Of the amounts appropriated, the allocation for each Producing Coastal State shall be calculated based on the ratio of qualified Outer Continental Shelf revenues generated off the coastline of the Producing Coastal State to the qualified Outer Continental Shelf revenues generated off the coastlines of all Producing Coastal States for each fiscal year. Where there is more than one Producing Coastal State within 200 miles of a leased tract, the amount of each Producing Coastal State's allocation for such leased tract shall be inversely proportional to the distance between the nearest point on the coastline of such State and the geographic center of each leased tract or portion of the leased tract (to the nearest whole mile) that is within 200 miles of that coastline, as determined by the Secretary.

''(2)(A) Thirty-five percent of each Producing Coastal State's allocable share as determined under paragraph (1) shall be paid directly to the coastal political subdivisions by the Secretary based on the following formula:

''(i) Twenty-five percent shall be allocated based on the ratio of such coastal political subdivision's coastal population to the coastal population of all coastal political subdivisions in the Producing Coastal State.

''(ii) Twenty-five percent shall be allocated based on the ratio of such coastal political subdivision's coastline miles to the coastline miles of a coastal political subdivision in the Producing Coastal State except that for those coastal political subdivisions in the State of Louisiana without a coastline, the coastline for purposes of this element of the formula shall be the average length of the coastline of the remaining coastal subdivisions in the state.

''(iii) Fifty percent shall be allocated based on the relative distance of such coastal political subdivision from any leased tract used to calculate the Producing Coastal State's allocation using ratios that are inversely proportional to the distance between the point in the coastal political subdivision closest to the geographic center of each leased tract or portion, as determined by the Secretary, except that in the State of Alaska, the funds for this element of the formula shall be divided equally among the two closest coastal political subdivisions. For purposes of the calculations under this clause, a leased tract or portion of a leased tract shall be excluded if the leased tract or portion is located in a geographic area where a moratorium on new leasing was in effect on January 1, 2002, unless the lease was issued prior to the establishment of the moratorium and was in production on January

''(B) Of the allocable share of the State of Louisiana as determined under paragraph (1), the Secretary shall pay—

''(i) 17.5 percent directly to coastal political subdivisions in the State of Louisiana in accordance with the formula described in clauses (i) through (iii) of subparagraph (A) to be used for—

''(I) wetland protection and restoration;

''(II) land and water conservation;

''(III) flood control and drainage;

''(IV) watewater treatment;

''(V) parks and recreation; and

''(VI) bridge repair and replacement;

''(ii) 17.5 percent to a coastal infrastructure restoration fund maintained by the State of Louisiana to be used for—

''(I) barrier island restoration;

''(II) wildlife and wetland research and education;

''(III) Atchafalaya Basin preservation;

''(IV) State Land and Water Conservation Fund activities; and

''(V) coastal commerce and development.

''(3) Any amount allocated to a Producing Coastal State or coastal political subdivision but not disbursed because of a failure to have an approved Coastal Impact Assistance Plan under this section shall be allocated equally by the Secretary among all other Producing Coastal States in a manner consistent with this subsection except that the Secretary shall hold in escrow such amount until the final resolution of any appeal regarding the disapproval of a plan submitted under this section. The Secretary may waive the provisions of this paragraph and hold a Producing Coastal State's allocable share in escrow if the Secretary determines that such State is making a good faith effort to develop and submit, or update, a Coastal Impact Assistance Plan.

''(4) For purposes of this subsection, calculations of payments for fiscal years 2004 through 2006 shall be made using qualified Outer Continental Shelf revenues received in

fiscal year 2003, and calculations of payments for fiscal years 2007 through 2009 shall be made using qualified Outer Continental Shelf revenues received in fiscal year 2006.

''(d) COASTAL IMPACT ASSISTANCE PLAN.—

''(1) The Governor of each Producing Coastal State shall prepare, and submit to the Secretary, a Coastal Impact Assistance Plan. The Governor shall solicit local input and shall provide for public participation in the development of the plan. The plan shall be submitted to the Secretary by July 1, 2004. Amounts received by Producing Coastal States and coastal political subdivisions may be used only for the purposes specified in the Producing Coastal State's Coastal Impact Assistance Plan.

''(2) The Secretary shall approve a plan under paragraph (1) prior to disbursement of amounts under this section. The Secretary shall approve the plan if the Secretary determines that the plan is consistent with the uses set forth in subsection (f) of this section and if the plan contains—

''(A) the name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of this section;

''(B) a program for the implementation of the plan which describes how the amounts provided under this section will be used;

''(C) a contact for each political subdivision and description of how coastal political subdivisions will use amounts provided under this section, including a certification by the Governor that such uses are consistent with the requirements of this section;

''(D) certification by the Governor that ample opportunity has been accorded for public participation in the development and revision of the plan; and

''(E) measures for taking into account other relevant Federal resources and programs.

''(3) The Secretary shall approve or disapprove each plan or amendment within 90 days of its submission.

''(4) Any amendment to the plan shall be prepared in accordance with the requirements of this subsection and shall be submitted to the Secretary for approval or disapproval.

''(5) COASTAL IMPACT ASSISTANCE PLANS OF COASTAL POLITICAL SUBDIVISIONS.—

''(A) IN GENERAL.—A Coastal Impact Assistance Plan for the State of Louisiana shall include a coastal impact assistance plan developed by each coastal political subdivision in the State of Louisiana.

''(B) APPROVAL.—In approving the plans of the coastal political subdivisions, the Governor of the State of Louisiana shall have the authority only to ensure that the proposed uses of funds that are included in the plans of the coastal political subdivisions are consistent with the authorized uses under subsection (e).

SA 1532. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I of division B add the following:

SEC. 102. EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES TO INCLUDE WAVE ENERGY.

(a) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by this Act, is amended—

(1) by striking ''and'' at the end of subparagraph (G),

(2) by striking the period at the end of subparagraph (H) and inserting '', and'', and

(3) by adding at the end the following new subparagraph:

''(I) wave energy.''.

(b) WAVE ENERGY.—Section 45(c), as amended by this Act, is amended by adding at the end the following new paragraph:

''(8) WAVE ENERGY.—The term 'wave energy' means energy derived from the energy stored in ocean waves.''.

(c) WAVE ENERGY FACILITY.—Section 45(d) (relating to qualified facilities), as amended by this Act, is amended by adding at the end the following new paragraph:

''(8) WAVE ENERGY FACILITY.—In the case of a facility using wave energy to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of the Energy Tax Incentives Act of 2003 and before January 1, 2007.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

SA 1533. Mr. DURBIN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII of division B, insert the following:

SEC. ___. MODIFICATION OF CREDIT FOR RESIDENTIAL WIND ENERGY PROPERTY.

(a) DEFINITION OF QUALIFIED WIND ENERGY PROPERTY.—Section 25C, as added by this Act, is amended by striking paragraph (5) of subsection (d) and inserting the following:

''(5) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE DEFINED.—

''(A) IN GENERAL.—The term 'qualified wind energy property expenditure' means an expenditure for qualified wind energy property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer, including all necessary installation fees and charges.

''(B) QUALIFIED WIND ENERGY PROPERTY.—The term 'qualified wind energy property' means a qualifying wind turbine—

''(i) the original use of which commences with the taxpayer, and

''(ii) which carries at least a 5-year limited warranty covering defects in design, material, or workmanship, and, for any qualifying wind turbine that is not installed by the taxpayer, at least a 5-year limited warranty covering defects in installation.

''(C) QUALIFYING WIND TURBINE.—The term 'qualifying wind turbine' means a wind turbine of 75 kilowatts of rated capacity or less which at the time of manufacture and not more than 1 year from the date of purchase meets the latest performance rating standards published by the American Wind Energy Association or the International Electrotechnical Commission and which is used to generate electricity.''.

(b) AMOUNT OF CREDIT.—

(1) IN GENERAL.—Subsection (b)(1) of section 25C, as added by this Act, is amended by striking ''and'' at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following:

''(C) $1,000 for each kilowatt of capacity of property described in subsection (d)(5), and''.

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 25C(b)(1), as added by this Act, is amended by striking '', (2), or (5)'' and inserting ''or (2)''.

(c) OTHER MODIFICATIONS.—

(1) Paragraph (7) of section 25C(d) (relating to labor costs), as added by this Act, is amended by inserting ''or the local energy grid'' after ''dwelling unit''.

(2) Paragraph (5) of section 25C(e) (relating to special rules), as added by this Act, is amended by inserting ''and, in the case of qualified wind energy property, the property has begun to be used to generate electricity'' before the period.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made after the date of the enactment of this Act, in taxable years ending after such date.

SEC. ___. CREDIT FOR BUSINESS INSTALLATION OF SMALL WIND ENERGY PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3), as amended by this Act, (defining energy property) is amended by striking ''or'' at the end of clause (iii), by adding ''or'' at the end of clause (iv), and by inserting after clause (iv) the following new clause:

''(v) qualified wind energy property installed before January 1, 2009,''.

(b) QUALIFIED WIND ENERGY PROPERTY.—Subsection (a) of section 48, as amended by this Act, is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

''(6) QUALIFIED WIND ENERGY PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified wind energy property' means a qualifying wind turbine—

''(i) installed on or in connection with a farm (as defined in section 6420(c)), a ranch, or an establishment of an eligible small business (as defined in section 44(b)) which is located in the United States and which is owned and used by the taxpayer,

''(ii) the original use of which commences with the taxpayer, and

''(iii) which carries at least a 5-year limited warranty covering defects in design, material, or workmanship, and, for any qualifying wind turbine that is not installed by the taxpayer, at least a 5-year limited warranty covering defects in installation.

''(B) LIMITATION.—In the case of any qualified wind energy property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(i) 30 percent of the basis of such property, including all necessary installation fees and charges, or

''(ii) $1,000 for each kilowatt of capacity of such property.

''(C) QUALIFYING WIND TURBINE.—For purposes of this paragraph the term 'qualifying wind turbine' means a wind turbine of 75 kilowatts of rated capacity or less which at the time of manufacture and not more than 1 year after the date of purchase meets the latest performance rating standards published by the American Wind Energy Association or the International Electrotechnical Commission and which is used to generate electricity.

''(D) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for any qualified wind energy property unless such property meets appropriate fire and electric code requirements.''.

(c) LIMITATION.—Section 48(a)(2)(A) (relating to energy percentage), as amended by this Act, is amended redesignating clause (ii) as clause (iii), by striking ''and'' at the end of clause (i), and by inserting after clause (i) the following new clause:

''(ii) in the case of qualified wind energy property, 30 percent, and''.

(d) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(6), as added by this Act, is amended by striking ''section 48(a)(6)(C)'' and inserting ''section 48(a)(7)(C)''.

(B) Section 29(b)(3)(A)(i)(III), as amended by this Act, is amended by striking ''section 48(a)(6)(C)'' and inserting ''section 48(a)(7)(C)''.

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SA 1534. Mr. BINGAMAN (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place strike Section 715 and insert the following:

SEC. 715. REDUCTION OF ENGINE IDLING OF HEAVY-DUTY VEHICLES.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ADVANCED TRUCK STOP ELECTRIFICATION SYSTEM.—The term ''advanced truck stop electrification system'' means a stationary and independent electrification system that delivers heat, air conditioning, electricity, communications, and other convenient services, and is capable of providing verifiable and auditable evidence of use of those services, to a heavy-duty vehicle and any occupants of the heavy-duty vehicle without relying on components mounted onboard the heavy-duty vehicle for delivery of those services.

(3) AUXILIARY POWER UNIT.—The term ''auxiliary power unit'' means an integrated system that—

(A) provides heat, air conditioning, engine warming, and electricity to the factory-installed components on a heavy-duty vehicle as if the main drive engine of the heavy-duty vehicle were running; and

(B) is certified by the Administrator of the Environmental Protection Agency under part 89 of title 40, Code of Federal Regulations (or successor regulations), as meeting applicable emission standards.

(4) HEAVY-DUTY VEHICLE.—The term ''heavy-duty vehicle'' means a vehicle that—

(A) has a gross vehicle weight rating greater than 12,500 pounds; and

(B) is powered by a diesel engine.

(5) IDLE REDUCTION TECHNOLOGY.—The term ''idle reduction technology'' means an advanced truck stop electrification system, auxiliary power unit, or another device or system of devices that—

(A) is used to reduce long-duration idling of a heavy-duty vehicle; and

(B) allows for the main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle to be shut down.

(6) LONG-DURATION IDLING.—

(A) IN GENERAL.—The term ''long-duration idling'' means the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle, for a period greater than 15 consecutive minutes, at a time at which the main drive engine is not engaged in gear.

(B) EXCLUSIONS.—The term ''long-duration idling'' does not include the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle during a routine stoppage associated with traffic movement or congestion.

(b) IDLE REDUCTION TECHNOLOGY BENEFITS, PROGRAMS, AND STUDIES.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall—

(A)(i) commence a review of the mobile source air emission models of the Environmental Protection Agency used under the Clean Air Act (42 U.S.C. 7401 et seq.) to determine whether the models accurately reflect the emissions resulting from long-duration idling of heavy-duty vehicles and other vehicles and engines; and

(ii) update those models as the Administrator determines to be appropriate; and

(B)(i) commence a review of the emission reductions achieved by the use of idle reduction technology; and

(ii) complete such revisions of the regulations and guidance of the Environmental Protection Agency as the Administrator determines to be appropriate.

(2) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall—

(A) complete the reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1); and

(B) prepare and make publicly available 1 or more reports on the results of the reviews.

(3) DISCRETIONARY INCLUSIONS.—The reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1) and the reports under paragraph (2)(B) may address the potential fuel savings resulting from use of idle reduction technology.

(4) IDLE REDUCTION DEPLOYMENT PROGRAM.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Administrator, in consultation with the Secretary of Transportation, shall establish a program to support deployment of idle reduction technology that benefits strategic locations based on air quality and congestion considerations.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator such sums as are necessary to carry out subparagraph (A).

(5) IDLING LOCATION STUDY.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Administrator, shall commence a study to analyze all locations at which heavy-duty vehicles stop for long duration idling, including—

(i) truck stops;

(ii) rest areas;

(iii) border crossings;

(iv) ports;

(v) transfer facilities; and

(vi) private terminals.

(B) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(i) complete the study under subparagraph (A); and

(ii) prepare and make publicly available 1 or more reports of the results of the study.

(c) VEHICLE WEIGHT EXEMPTION.—Section 127(a) of title 23, United States Code, is amended—

(1) by designating the first through eleventh sentences as paragraphs (1) through (11), respectively; and

(2) by adding at the end the following:

''(12) HEAVY-DUTY VEHICLES.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), in order to promote reduction of fuel use and emissions due to engine idling, the maximum gross vehicle weight limit and the axle weight limit for any heavy-duty vehicle equipped with an idle reduction technology shall be increased by a quantity necessary to compensate for the additional weight of the idle reduction system.

''(B) MAXIMUM WEIGHT INCREASE.—The weight increase under subparagraph (A) shall be not greater than 250 pounds.

''(C) PROOF.—On request by a regulatory or law enforcement agency, the vehicle operator shall provide proof (through demonstration or certification) that—

''(i) the idle reduction technology is fully functional at all times; and

''(ii) the 250-pound gross weight increase is not used for any purpose other than the use of idle reduction technology described in subparagraph (A).''

SA 1535. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page ___, strike lines ___ and insert the following:

''(B) uses an input of at least 75 percent coal to produce 50 percent or more of its thermal output as electricity,

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SA 1536. Mr. DURBIN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII of division B, insert the following:

SEC. ___. CREDIT FOR BUSINESS INSTALLATION OF SMALL WIND ENERGY PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3), as amended by this Act, (defining energy property) is amended by striking ''or'' at the end of clause (iii), by adding ''or'' at the end of clause (iv), and by inserting after clause (iv) the following new clause:

''(v) qualified wind energy property installed before January 1, 2009,''.

(b) QUALIFIED WIND ENERGY PROPERTY.—Subsection (a) of section 48, as amended by this Act, is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

''(6) QUALIFIED WIND ENERGY PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified wind energy property' means a qualifying wind turbine—

''(i) installed on or in connection with a farm (as defined in section 6420(c)), a ranch, or an establishment of an eligible small business (as defined in section 44(b)) which is located in the United States and which is owned and used by the taxpayer,

''(ii) the original use of which commences with the taxpayer, and

''(iii) which carries at least a 5-year limited warranty covering defects in design, material, or workmanship, and, for any qualifying wind turbine that is not installed by the taxpayer, at least a 5-year limited warranty covering defects in installation.

''(B) LIMITATION.—In the case of any qualified wind energy property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to—10 percent of the basis of such property, including all necessary installation fees and charges.

''(C) QUALIFYING WIND TURBINE.—For purposes of this paragraph the term 'qualifying wind turbine' means a wind turbine of 75 kilowatts of rated capacity or less which at the time of manufacture and not more than 1 year after the date of purchase meets the latest performance rating standards published by the American Wind Energy Association or the International Electrotechnical Commission and which is used to generate electricity.

''(D) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for any

qualified wind energy property unless such property meets appropriate fire and electric code requirements.''.

(c) LIMITATION.—Section 48(a)(2)(A) (relating to energy percentage), as amended by this Act, is amended redesignating clause (ii) as clause (iii), by striking ''and'' at the end of clause (i), and by inserting after clause (i) the following new clause:

''(ii) in the case of qualified wind energy property, 10 percent, and''.

(d) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(6), as added by this Act, is amended by striking ''section 48(a)(6)(C)'' and inserting ''section 48(a)(7)(C)''.

(B) Section 29(b)(3)(A)(i)(III), as amended by this Act, is amended by striking ''section 48(a)(6)(C)'' and inserting ''section 48(a)(7)(C)''.

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SA 1537. Mr. FRIST (for himself and Mr. DASCHLE) proposed an amendment to the bill H.R. 6, to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes; as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Energy Policy Act of 2003''.

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DIVISION A—RELIABLE AND DIVERSE POWER GENERATION AND TRANSMISSION

TITLE I—REGIONAL COORDINATION

SEC. 101. POLICY ON REGIONAL COORDINATION.

(a) STATEMENT OF POLICY.—It is the policy of the Federal Government to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable energy services to the public while minimizing the impact of providing energy services on communities and the environment.

(b) DEFINITION OF ENERGY SERVICES.—For purposes of this section, the term ''energy services'' means—

(1) the generation or transmission of electric energy,

(2) the transportation, storage, and distribution of crude oil, residual fuel oil, refined petroleum product, or natural gas, or

(3) the reduction in load through increased efficiency, conservation, or load control measures.

SEC. 102. FEDERAL SUPPORT FOR REGIONAL COORDINATION.

(a) TECHNICAL ASSISTANCE.—The Secretary of Energy shall provide technical assistance to States and regional organizations formed by two or more States to assist them in coordinating their energy policies on a regional basis. Such technical assistance may include assistance in—

(1) identifying the areas with the greatest energy resource potential, and assessing future supply availability and demand requirements,

(2) planning, coordinating, and siting additional energy infrastructure, including generating facilities, electric transmission facilities, pipelines, refineries, and distributed generation facilities to maximize the efficiency of energy resources and infrastructure and meet regional needs with the minimum adverse impacts on the environment,

(3) identifying and resolving problems in distribution networks,

(4) developing plans to respond to surge demand or emergency needs, and

(5) developing renewable energy, energy efficiency, conservation, and load control programs.

(b) ANNUAL CONFERENCE ON REGIONAL ENERGY COORDINATION.—

(1) ANNUAL CONFERENCE.—The Secretary of Energy shall convene an annual conference to promote regional coordination on energy policy and infrastructure issues.

(2) PARTICIPATION.—The Secretary of Energy shall invite appropriate representatives of Federal, State, and regional energy organizations, and other interested parties.

(3) STATE AND FEDERAL AGENCY COOPERATION.—The Secretary of Energy shall consult and cooperate with State and regional energy organizations, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of the Treasury, the Chairman of the Federal Energy Regulatory Commission, the Administrator of the Environmental Protection Agency, and the Chairman of the Council on Environmental Quality in the planning and conduct of the conference.

(4) AGENDA.—The Secretary of Energy, in consultation with the officials identified in paragraph (3) and participants identified in paragraph (2), shall establish an agenda for each conference that promotes regional coordination on energy policy and infrastructure issues.

(5) RECOMMENDATIONS.—Not later than 60 days after the conclusion of each annual conference, the Secretary of Energy shall report to the President and the Congress recommendations arising out of the conference that may improve—

(A) regional coordination on energy policy and infrastructure issues, and

(B) Federal support for regional coordination.

TITLE II—ELECTRICITY

Subtitle A—Amendments to the Federal Power Act

SEC. 201. DEFINITIONS.

(a) DEFINITION OF ELECTRIC UTILITY.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

''(22) 'electric utility' means any person or Federal or State agency (including any municipality) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing agency.''.

(b) DEFINITION OF TRANSMITTING UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

''(23) TRANSMITTING UTILITY.—The term 'transmitting utility' means an entity (including any entity described in section 201(f)) that owns or operates facilities used for the transmission of electric energy in—

''(A) interstate commerce; or

''(B) for the sale of electric energy at wholesale.''.

SEC. 202. ELECTRIC UTILITY MERGERS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b) is amended to read as follows:

''(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

''(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10,000,000,

''(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with the facilities of any other person, by any means whatsoever,

''(C) purchase, acquire, or take any security of any other public utility, or

''(D) purchase, lease, or otherwise acquire existing facilities for the generation of electric energy unless such facilities will be used exclusively for the sale of electric energy at retail.

''(2) No holding company in a holding company system that includes a transmitting utility or an electric utility company shall purchase, acquire, or take any security of, or, by any means whatsoever, directly or indirectly, merge or consolidate with a transmitting utility, an electric utility company, a gas utility company, or a holding company in a holding company system that includes a transmitting utility, an electric utility company, or a gas utility company, without first having secured an order of the Commission authorizing it to do so.

''(3) Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

''(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or control, if it finds that the proposed transaction—

''(A) will be consistent with the public interest;

''(B) will not adversely affect the interests of consumers of electric energy of any public utility that is a party to the transaction or is an associate company of any party to the transaction;

''(C) will not impair the ability of the Commission or any State commission having jurisdiction over any public utility that is a party to the transaction or an associate company of any party to the transaction to protect the interests of consumers or the public; and

''(D) will not lead to cross-subsidization of associate companies or encumber any utility assets for the benefit of an associate company.

''(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4), and shall require the Commission to grant or deny an application for approval of a transaction of such type within 90 days after the conclusion of the hearing or opportunity to comment under paragraph (4). If the Commission does not act within 90 days, such application shall be deemed granted unless the Commission finds that further consideration is required

to determine whether the proposed transaction meets the standards of paragraph (4) and issues one or more orders tolling the time for acting on the application for an additional 90 days.

''(6) For purposes of this subsection, the terms 'associate company', 'electric utility company', 'gas utility company', 'holding company', and 'holding company system' have the meaning given those terms in the Public Utility Holding Company Act of 2003.''.

SEC. 203. MARKET-BASED RATES.

(a) APPROVAL OF MARKET-BASED RATES.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(h) The Commission may determine whether a market-based rate for the sale of electric energy subject to the jurisdiction of the Commission is just and reasonable and not unduly discriminatory or preferential. In making such determination, the Commission shall consider such factors as the Commission may deem to be appropriate and in the public interest, including to the extent the Commission considers relevant to the wholesale power market—

''(1) market power;

''(2) the nature of the market and its response mechanisms; and

''(3) reserve margins.''.

(b) REVOCATION OF MARKET-BASED RATES.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

''(f) Whenever the Commission, after a hearing had upon its own motion or upon complaint, finds that a rate charged by a public utility authorized to charge a market-based rate under section 205 is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate and fix the same by order.''.

SEC. 204. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

(1) striking ''the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'' in the second sentence and inserting ''the date of the filing of such complaint nor later than 5 months after the filing of such complaint'';

(2) striking ''60 days after'' in the third sentence and inserting ''of''; and

(3) striking ''expiration of such 60-day period'' in the third sentence and inserting ''publication date''.

SEC. 205. OPEN ACCESS TRANSMISSION BY CERTAIN UTILITIES.

Part II of the Federal Power Act is further amended by inserting after section 211 the following:

''OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES

''SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

''(1) at rates that are comparable to those that the unregulated transmitting utility charges itself, and

''(2) on terms and conditions (not relating to rates) that are comparable to those under Commission rules that require public utilities to offer open access transmission services and that are not unduly discriminatory or preferential.

''(b) The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—

''(1) sells no more than 4,000,000 megawatt hours of electricity per year;

''(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

''(3) meets other criteria the Commission determines to be in the public interest.

''(c) The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

''(d) In exercising its authority under paragraph (1), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

''(e) The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

''(f) The Commission may not require a State or municipality to take action under this section that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

''(g) For purposes of this subsection, the term 'unregulated transmitting utility' means an entity that—

''(1) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

''(2) is either an entity described in section 201(f) or a rural electric cooperative.''.

SEC. 206. ELECTRIC RELIABILITY STANDARDS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting the following after section 215 as added by this Act:

''SEC. 216. ELECTRIC RELIABILITY.

''(a) DEFINITIONS.—For purposes of this section—

''(1) 'bulk-power system' means the network of interconnected transmission facilities and generating facilities;

''(2) 'electric reliability organization' means a self-regulating organization certified by the Commission under subsection (c) whose purpose is to promote the reliability of the bulk-power system; and

''(3) 'reliability standard' means a requirement to provide for reliable operation of the bulk-power system approved by the Commission under this section.

''(b) JURISIDICTION AND APPLICABILITY.—The Commission shall have jurisdiction, within the United States, over an electric reliability organization, any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(c) CERTIFICATION.—(1) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(2) Following the issuance of a Commission rule under paragraph (1), any person may submit an application to the Commission for certification as an electric reliability organization. The Commission may certify an applicant if the Commission determines that the applicant—

''(A) has the ability to develop, and enforce reliability standards that provide for an adequate level of reliability of the bulk-power system;

''(B) has established rules that—

''(i) assure its independence of the users and owners and operators of the bulk-power system; while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any committee or subordinate organizational structure;

''(ii) allocate equitably dues, fees, and other charges among end users for all activities under this section;

''(iii) provide fair and impartial procedures for enforcement of reliability standards through imposition of penalties (including limitations on activities, functions, or operations, or other appropriate sanctions); and

''(iv) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.

''(3) If the Commission receives two or more timely applications that satisfy the requirements of this subsection, the Commission shall approve only the application it concludes will best implement the provisions of this section.

''(d) RELIABILITY STANDARDS.—(1) An electric reliability organization shall file a proposed reliability standard or modification to a reliability standard with the Commission.

''(2) The Commission may approve a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the electric reliability organization with respect to the content of a proposed standard or modification to a reliability standard, but shall not defer with respect to its effect on competition.

''(3) The electric reliability organization and the Commission shall rebuttably presume that a proposal from a regional entity organized on an interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the electric reliability organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order an electric reliability organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(e) ENFORCEMENT.—(1) An electric reliability organization may impose a penalty on a user or owner or operator of the bulk-power system if the electric reliability organization, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator of the bulk-power system has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice with the Commission, which shall affirm, set aside or modify the action.

''(2) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has violated or threatens to violate a reliability standard.

''(3) The Commission shall establish regulations authorizing the electric reliability organization to enter into an agreement to delegate authority to a regional entity for the purpose of proposing and enforcing reliability standards (including related activities) if the regional entity satisfies the provisions of subsection (c)(2) (A) and (B) and the agreement promotes effective and efficient administration of bulk-power system reliability, and may modify such delegation. The electric reliability organization and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the electric reliability organization's authority to enforce reliability standards directly to a regional entity consistent with the requirements of this paragraph.

''(4) The Commission may take such action as is necessary or appropriate against the electric reliability organization or a regional entity to

ensure compliance with a reliability standard or any Commission order affecting the electric reliability organization or a regional entity.

''(f) CHANGES IN ELECTRICITY RELIALBILITY ORGANIZATION RULES.—An electric reliability organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the electric reliability organization. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c)(2).

''(g) COORDINATION WITH CANADA AND MEXICO.—(1) The electric reliability organization shall take all appropriate steps to gain recognition in Canada and Mexico.

''(2) The President shall use his best efforts to enter into international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the electric reliability organization in the United States and Canada or Mexico.

''(h) RELIABILITY REPORTS.—The electric reliability organization shall conduct periodic assessments of the reliability and adequacy of the interconnected bulk-power system in North America.

''(i) SAVINGS PROVISIONS.—(1) The electric reliability organization shall have authority to develop and enforce compliance with standards for the reliable operation of only the bulk-power system.

''(2) This section does not provide the electric reliability organization or the Commission with the authority to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the electric reliability organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the electric reliability organization.

''(5) The Commission, after consultation with the electric reliability organization, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

''(j) APPLICATION OF ANTITRUST LAWS.—

''(1) IN GENERAL.—To the extent undertaken to develop, implement, or enforce a reliability standard, each of the following activities shall not, in any action under the antitrust laws, be deemed illegal per se—

''(A) activities undertaken by an electric reliability organization under this section, and

''(B) activities of a user or owner or operator of the bulk-power system undertaken in good faith under the rules of an electric reliability organization.

''(2) RULE OF REASON.—In any action under the antitrust laws, an activity described in paragraph (1) shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition and reliability.

''(3) DEFINITION.—For purposes of this subsection, 'antitrust laws' has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that it includes section 5 of the Federal Trade Commission Act (15 U. S.C. 45) to the extent that section 5 applies to unfair methods of competition.

''(k) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the electric reliability organization, a regional reliability entity, or the Commission regarding the governance of an existing or proposed regional reliability entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an interconnection-wide basis.

''(l) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.''.

SEC. 207. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act is further amended by adding at the end the following:

''SEC. 216. MARKET TRANSPARENCY RULES.

''(a) COMMISSION RULES.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide information about the availability and price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis.

''(b) INFORMATION REQUIRED.—The Commission shall require—

''(1) each regional transmission organization to provide statistical information about the available capacity and capacity constraints of transmission facilities operated by the organization; and

''(2) each broker, exchange, or other market-making entity that matches offers to sell and offers to buy wholesale electric energy in interstate commerce to provide statistical information about the amount and sale price of sales of electric energy at wholesale in interstate commerce it transacts.

''(c) TIMELY BASIS.—The Commission shall require the information required under subsection (b) to be posted on the Internet as soon as practicable and updated as frequently as practicable.

''(d) PROTECTION OF SENSITIVE INFORMATION.—The Commission shall exempt from disclosure commercial or financial information that the Commission, by rule or order, determines to be privileged, confidential, or otherwise sensitive.''.

SEC. 208. ACCESS TO TRANSMISSION BY INTERMITTENT GENERATORS.

Part II of the Federal Power Act is further amended by adding at the end the following:

''SEC. 217. ACCESS TO TRANSMISSION BY INTERMITTENT GENERATORS.

''(a) FAIR TREATMENT OF INTERMITTENT GENERATORS.—The Commission shall ensure that all transmitting utilities provide transmission service to intermittent generators in a manner that does not unduly prejudice or disadvantage such generators for characteristics that are—

''(1) inherent to intermittent energy resources; and

''(2) are beyond the control of such generators.

''(b) POLICIES.—The Commission shall ensure that the requirement in subsection (a) is met by adopting such policies as it deems appropriate which shall include the following:

''(1) Subject to the sole exception set forth in paragraph (2), the Commission shall ensure that the rates transmitting utilities charge intermittent generator customers for transmission services do not unduly prejudice or disadvantage intermittent generator customers for scheduling deviations.

''(2) The Commission may exempt a transmitting utility from the requirement set forth in paragraph (1) if the transmitting utility demonstrates that scheduling deviations by its intermittent generator customers are likely to have an adverse impact on the reliability of the transmitting utility's system.

''(3) The Commission shall ensure that to the extent any transmission charges recovering the transmitting utility's embedded costs are assessed to such intermittent generators, they are assessed to such generators on the basis of kilowatt-hours generated or some other method to ensure that they are fully recovered by the transmitting utility.

''(4) The Commission shall require transmitting utilities to offer to intermittent generators, and may require transmitting utilities to offer to all transmission customers, access to nonfirm transmission service.

''(c) DEFINITIONS.—As used in this section:

''(1) The term 'intermittent generator' means a facility that generates electricity using wind or solar energy and no other energy source.

''(2) The term 'nonfirm transmission service' means transmission service provided on an 'as available' basis.

''(3) The term 'scheduling deviation' means delivery of more or less energy than has previously been forecast in a schedule submitted by an intermittent generator to a control area operator or transmitting utility.''.

SEC. 209. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by—

(1) inserting ''electric utility,'' after ''Any person,''; and

(2) inserting ''transmitting utility,'' after ''licensee'' each place it appears.

(b) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended by inserting ''or transmitting utility'' after ''any person'' in the first sentence.

(c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting ''electric utility,'' after ''Any person,'' in the first sentence.

(d) CRIMINAL PENALTIES.—Section 316(c) of the Federal Power Act (16 U.S.C. 825o(c)) is repealed.

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended by striking ''section 211, 212, 213, or 214'' each place it appears and inserting ''Part II''.

SEC. 210. ELECTRIC POWER TRANSMISSION SYSTEMS.

The Federal Government should be attentive to electric power transmission issues, including issues that can be addressed through policies that facilitate investment in, the enhancement of, and the efficiency of electric power transmission systems.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2003''.

SEC. 222. DEFINITIONS.

For purposes of this subtitle:

(1) The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) The term ''person'' means an individual or company.

(13) The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) The term ''public utility company'' means an electric utility company or a gas utility company.

(15) The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 224. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 225. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail by the State commission;

(2) the State commission deems are relevant to costs incurred by such public utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) LIMITATION.—Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(c) CONFIDENTIALITY OF INFORMATION.—The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

(d) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, and other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, and other records under any other Federal law, contract, or otherwise.

(e) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 226. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the effective date of this subtitle, the Commission shall promulgate a final rule to exempt from the requirements of section 224 any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.);

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—The Commission shall exempt a person or transaction from the requirements of section 224, if, upon application or upon the motion of the Commission—

(1) the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

SEC. 227. AFFILIATE TRANSACTIONS.

(a) COMMISSION AUTHORITY UNAFFECTED.—Nothing in this subtitle shall limit the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) to require that jurisdictional rates are just and reasonable, including the ability to deny or approve the pass through of costs, the prevention of cross-subsidization, and the promulgation of such rules and regulations as are necessary or appropriate for the protection of utility consumers.

(b) RECOVERY OF COSTS.—Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company from an associate company.

SEC. 228. APPLICABILITY.

Except as otherwise specifically provided in this subtitle, no provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of his or her official duty.

SEC. 229. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 230. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 231. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which

it is legally engaged or authorized to engage on the effective date of this subtitle.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

SEC. 232. IMPLEMENTATION.

Not later than 18 months after the date of enactment of this subtitle, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this subtitle (other than section 225); and

(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 233. TRANSFER OF RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 234. INTER-AGENCY REVIEW OF COMPETITION IN THE WHOLESALE AND RETAIL MARKETS FOR ELECTRIC ENERGY.

(a) TASK FORCE.—There is established an inter-agency task force, to be known as the ''Electric Energy Market Competition Task Force'' (referred to in this section as the ''task force''), which shall consist of—

(1) one member each from—

(A) the Department of Justice, to be appointed by the Attorney General of the United States;

(B) the Federal Energy Regulatory Commission, to be appointed by the chairman of that Commission; and

(C) the Federal Trade Commission, to be appointed by the chairman of that Commission; and

(2) two advisory members (who shall not vote), of whom—

(A) one shall be appointed by the Secretary of Agriculture to represent the Rural Utility Service; and

(B) one shall be appointed by the Chairman of the Securities and Exchange Commission to represent that Commission.

(b) STUDY AND REPORT.—

(1) STUDY.—The task force shall perform a study and analysis of the protection and promotion of competition within the wholesale and retail market for electric energy in the United States.

(2) REPORT.—

(A) FINAL REPORT.—Not later than 1 year after the effective date of this subtitle, the task force shall submit a final report of its findings under paragraph (1) to the Congress.

(B) PUBLIC COMMENT.—At least 60 days before submission of a final report to the Congress under subparagraph (A), the task force shall publish a draft report in the Federal Register to provide for public comment.

(c) FOCUS.—The study required by this section shall examine—

(1) the best means of protecting competition within the wholesale and retail electric market;

(2) activities within the wholesale and retail electric market that may allow unfair and unjustified discriminatory and deceptive practices;

(3) activities within the wholesale and retail electric market, including mergers and acquisitions, that deny market access or suppress competition;

(4) cross-subsidization that may occur between regulated and nonregulated activities; and

(5) the role of State public utility commissions in regulating competition in the wholesale and retail electric market.

(d) CONSULTATION.—In performing the study required by this section, the task force shall consult with and solicit comments from its advisory members, the States, representatives of the electric power industry, and the public.

SEC. 235. GAO STUDY ON IMPLEMENTATION.

(a) STUDY.—The Comptroller General shall conduct a study of the success of the Federal Government and the States during the 18-month period following the effective date of this subtitle in—

(1) the prevention of anticompetitive practices and other abuses by public utility holding companies, including cross-subsidization and other market power abuses; and

(2) the promotion of competition and efficient energy markets to the benefit of consumers.

(b) REPORT TO CONGRESS.—Not earlier than 18 months after the effective date of this subtitle or later than 24 months after that effective date, the Comptroller General shall submit a report to the Congress on the results of the study conducted under subsection (a), including probable causes of its findings and recommendations to the Congress and the States for any necessary legislative changes.

SEC. 236. EFFECTIVE DATE.

This subtitle shall take effect 18 months after the date of enactment of this subtitle.

SEC. 237. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this subtitle.

SEC. 238. CONFORMING AMENDMENTS TO THE FEDERAL POWER ACT.

(a) CONFLICT OF JURISDICTION.—Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

(b) DEFINITIONS.—(1) Section 201(g) of the Federal Power Act (16 U.S.C. 824(g)) is amended by striking ''1935'' and inserting ''2002''.

(2) Section 214 of the Federal Power Act (16 U.S.C. 824m) is amended by striking ''1935'' and inserting ''2002''.

Subtitle C—Amendments to the Public Utility Regulatory Policies Act of 1978

SEC. 241. REAL-TIME PRICING AND TIME-OF-USE METERING STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(11) REAL-TIME PRICING.—(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a real-time rate schedule, under which the rate charged by the electric utility varies by the hour (or smaller time interval) according to changes in the electric utility's wholesale power cost. The real-time pricing service shall enable the electric consumer to manage energy use and cost through real-time metering and communications technology.

''(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.

''(12) TIME-OF-USE METERING.—(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a time-of-use rate schedule which enables the electric consumer to manage energy use and cost through time-of-use metering and technology.

''(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.''.

(b) SPECIAL RULES.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

''(i) REAL-TIME PRICING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same real-time metering and communication service as a direct retail electric consumer of the electric utility.

''(j) TIME-OF-USE METERING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same time-of-use metering and communication service as a direct retail electric consumer of the electric utility.''.

SEC. 242. ADOPTION OF ADDITIONAL STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 113(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623(b)) is amended by adding at the end the following:

''(6) DISTRIBUTED GENERATION.—Each electric utility shall provide distributed generation, combined heat and power, and district heating and cooling systems competitive access to the local distribution grid and competitive pricing of service, and shall use simplified standard contracts for the interconnection of generating facilities that have a power production capacity of 250 kilowatts or less.

''(7) DISTRIBUTION INTERCONNECTIONS.—No electric utility may refuse to interconnect a generating facility with the distribution facilities of the electric utility if the owner or operator of the generating facility complies with technical standards adopted by the State regulatory authority and agrees to pay the costs established by such State regulatory authority.

''(8) MINIMUM FUEL AND TECHNOLOGY DIVERSITY STANDARD.—Each electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

''(9) FOSSIL FUEL EFFICIENCY.—Each electric utility shall develop and implement a ten-year plan to increase the efficiency of its fossil fuel generation and shall monitor and report to its State regulatory authority excessive greenhouse gas emissions resulting from the inefficient operation of its fossil fuel generating plants.''.

(b) TIME FOR ADOPTING STANDARDS.—Section 113 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623) is further amended by adding at the end the following:

''(d) SPECIAL RULE.—For purposes of implementing paragraphs (6), (7), (8), and (9) of subsection (b), any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this subsection.''.

SEC. 243. TECHNICAL ASSISTANCE.

Section 132(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(c)) is amended to read as follows:

''(c) TECHNICAL ASSISTANCE FOR CERTAIN RESPONSIBILITIES.—The Secretary may provide such technical assistance as he determines appropriate to assist State regulatory authorities and electric utilities in carrying out their responsibilities under section 111(d)(11) and paragraphs (6), (7), (8), and (9) of section 113(b).''.

SEC. 244. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16

U.S.C. 824a–3) is amended by adding at the end the following:

''(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

''(1) OBLIGATION TO PURCHASE.— After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has access to independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy.

''(2) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility under this section if competing retail electric suppliers are able to provide electric energy to the qualifying cogeneration facility or qualifying small power production facility.

''(3) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

''(4) RECOVERY OF COSTS.—

''(A) REGULATION.—To ensure recovery by an electric utility that purchases electric energy or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed under this section before the date of enactment of this subsection, of all prudently incurred costs associated with the purchases, the Commission shall issue and enforce such regulations as may be required to ensure that the electric utility shall collect the prudently incurred costs associated with such purchases.

''(B) ENFORCEMENT.—A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).''.

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

(1) Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows:

''(C) 'qualifying small power production facility' means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.''.

(2) Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

''(B) 'qualifying cogeneration facility' means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.''.

SEC. 245. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is further amended by adding at the end the following:

''(13) NET METERING.—(A) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

''(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.''.

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is further amended by adding at the end the following:

''(k) NET METERING.—

''(1) RATES AND CHARGES.—An electric utility—

''(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

''(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

''(2) MEASUREMENT.—An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period in accordance with normal metering practices.

''(3) ELECTRIC ENERGY SUPPLIED EXCEEDING ELECTRIC ENERGY GENERATED.—If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with normal metering practices.

''(4) ELECTRIC ENERGY GENERATED EXCEEDING ELECTRIC ENERGY SUPPLIED.—If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

''(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

''(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period, with the kilowatt-hour credit appearing on the bill for the following billing period.

''(5) SAFETY AND PERFORMANCE STANDARDS.—An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

''(6) ADDITIONAL CONTROL AND TESTING REQUIREMENTS.—The Commission, after consultation with State regulatory authorities and nonregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.

''(7) DEFINITIONS.—For purposes of this subsection:

''(A) The term 'eligible on-site generating facility' means—

''(i) a facility on the site of a residential electric consumer with a maximum generating capacity of 10 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; or

''(ii) a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system.

''(B) The term 'renewable energy resource' means solar, wind, biomass, or geothermal energy.

''(C) The term 'high efficiency system' means fuel cells or combined heat and power.

''(D) The term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.''.

Subtitle D—Consumer Protections

SEC. 251. INFORMATION DISCLOSURE.

(a) OFFERS AND SOLICITATIONS.—The Federal Trade Commission shall issue rules requiring each electric utility that makes an offer to sell electric energy, or solicits electric consumers to purchase electric energy to provide the electric consumer a statement containing the following information—

(1) the nature of the service being offered, including information about interruptibility of service;

(2) the price of the electric energy, including a description of any variable charges;

(3) a description of all other charges associated with the service being offered, including access charges, exit charges, back-up service charges, stranded cost recovery charges, and customer service charges; and

(4) information the Federal Trade Commission determines is technologically and economically feasible to provide, is of assistance to electric consumers in making purchasing decisions, and concerns—

(A) the product or its price;

(B) the share of electric energy that is generated by each fuel type; and

(C) the environmental emissions produced in generating the electric energy.

(b) PERIODIC BILLINGS.—The Federal Trade Commission shall issue rules requiring any electric utility that sells electric energy to transmit to each of its electric consumers, in addition to the information transmitted pursuant to section 115(f) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625(f)), a clear and concise statement containing the information described in subsection (a)(4) for each billing period (unless such information is not reasonably ascertainable by the electric utility).

SEC. 252. CONSUMER PRIVACY.

(a) PROHIBITION.—The Federal Trade Commission shall issue rules prohibiting any electric utility that obtains consumer information in connection with the sale or delivery of electric energy to an electric consumer from using, disclosing, or permitting access to such information unless the electric consumer to whom such information relates provides prior written approval.

(b) PERMITTED USE.—The rules issued under this section shall not prohibit any electric utility from using, disclosing, or permitting access to consumer information referred to in subsection (a) for any of the following purposes—

(1) to facilitate an electric consumer's change in selection of an electric utility under procedures approved by the State or State regulatory authority;

(2) to initiate, render, bill, or collect for the sale or delivery of electric energy to electric consumers or for related services;

(3) to protect the rights or property of the person obtaining such information;

(4) to protect retail electric consumers from fraud, abuse, and unlawful subscription in the sale or delivery of electric energy to such consumers;

(5) for law enforcement purposes; or

(6) for purposes of compliance with any Federal, State, or local law or regulation authorizing disclosure of information to a Federal, State, or local agency.

(c) AGGREGATE CONSUMER INFORMATION.—The rules issued under this subsection may permit a

person to use, disclose, and permit access to aggregate consumer information and may require an electric utility to make such information available to other electric utilities upon request and payment of a reasonable fee.

(d) DEFINITIONS.—As used in this section:

(1) The term ''aggregate consumer information'' means collective data that relates to a group or category of retail electric consumers, from which individual consumer identities and characteristics have been removed.

(2) The term ''consumer information'' means information that relates to the quantity, technical configuration, type, destination, or amount of use of electric energy delivered to any retail electric consumer.

SEC. 253. OFFICE OF CONSUMER ADVOCACY.

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) ENERGY CUSTOMER.—The term ''energy customer'' means a residential customer or a small commercial customer that receives products or services from a public utility or natural gas company under the jurisdiction of the Commission.

(3) NATURAL GAS COMPANY.—The term ''natural gas company'' has the meaning given the term in section 2 of the Natural Gas Act (15 U.S.C. 717a), as modified by section 601(a) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3431(a)).

(4) OFFICE.—The term ''Office'' means the Office of Consumer Advocacy established by subsection (b)(1).

(5) PUBLIC UTILITY.—The term ''public utility'' has the meaning given the term in section 201(e) of the Federal Power Act (16 U.S.C. 824(e)).

(6) SMALL COMMERCIAL CUSTOMER.—The term ''small commercial customer'' means a commercial customer that has a peak demand of not more than 1,000 kilowatts per hour.

(b) OFFICE.—

(1) ESTABLISHMENT.—There is established within the Department of Justice the Office of Consumer Advocacy.

(2) DIRECTOR.—The Office shall be headed by a Director to be appointed by the President, by and with the advice and consent of the Senate.

(3) DUTIES.—The Office may represent the interests of energy customers on matters concerning rates or service of public utilities and natural gas companies under the jurisdiction of the Commission—

(A) at hearings of the Commission;

(B) in judicial proceedings in the courts of the United States;

(C) at hearings or proceedings of other Federal regulatory agencies and commissions.

SEC. 254. UNFAIR TRADE PRACTICES.

(a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer.

(b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

SEC. 255. APPLICABLE PROCEDURES.

The Federal Trade Commission shall proceed in accordance with section 553 of title 5, United States Code, when prescribing a rule required by this subtitle.

SEC. 256. FEDERAL TRADE COMMISSION ENFORCEMENT.

Violation of a rule issued under this subtitle shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) respecting unfair or deceptive acts or practices. All functions and powers of the Federal Trade Commission under such Act are available to the Federal Trade Commission to enforce compliance with this subtitle notwithstanding any jurisdictional limits in such Act.

SEC. 257. STATE AUTHORITY.

Nothing in this subtitle shall be construed to preclude a State or State regulatory authority from prescribing and enforcing laws, rules, or procedures regarding the practices which are the subject of this section.

SEC. 258. APPLICATION OF SUBTITLE.

The provisions of this subtitle apply to each electric utility if the total sales of electric energy by such utility for purposes other than resale exceed 500 million kilowatt-hours per calendar year. The provisions of this subtitle do not apply to the operations of an electric utility to the extent that such operations relate to sales of electric energy for purposes of resale.

SEC. 259. DEFINITIONS.

As used in this subtitle:

(1) The term ''aggregate consumer information'' means collective data that relates to a group or category of electric consumers, from which individual consumer identities and identifying characteristics have been removed.

(2) The term ''consumer information'' means information that relates to the quantity, technical configuration, type, destination, or amount of use of electric energy delivered to an electric consumer.

(3) The terms ''electric consumer'', ''electric utility'', and ''State regulatory authority'' have the meanings given such terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

Subtitle E—Renewable Energy and Rural Construction Grants

SEC. 261. RENEWABLE ENERGY PRODUCTION INCENTIVE.

(a) INCENTIVE PAYMENTS.—Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended by striking ''and which satisfies'' and all that follows through ''Secretary shall establish.'' and inserting the following: ''. The Secretary shall establish other procedures necessary for efficient administration of the program. The Secretary shall not establish any criteria or procedures that have the effect of assigning to proposals a higher or lower priority for eligibility or allocation of appropriated funds on the basis of the energy source proposed.''.

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—Section 1212(b) of the Energy Policy Act of 1992 (42 U.S.C. 13317(b)) is amended—

(1) by striking ''a State or any political'' and all that follows through ''nonprofit electrical cooperative'' and inserting the following: ''a nonprofit electrical cooperative, a public utility described in section 115 of such Code, a State, Commonwealth, territory, or possession of the United States or the District of Columbia, or a political subdivision thereof, or an Indian tribal government or subdivision thereof,''; and

(2) by inserting ''landfill gas, incremental hydropower, ocean'' after ''wind, biomass,''.

(c) ELIGIBILITY WINDOW.—Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended by striking ''during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section'' and inserting ''before October 1, 2013''.

(d) PAYMENT PERIOD.—Section 1212(d) of the Energy Policy Act of 1992 (42 U.S.C. 13317(d)) is amended by inserting ''or in which the Secretary finds that all necessary Federal and State authorizations have been obtained to begin construction of the facility'' after ''eligible for such payments''.

(e) AMOUNT OF PAYMENT.—Section 1212(e)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is amended by inserting ''landfill gas, incremental hydropower, ocean'' after ''wind, biomass,''.

(f) SUNSET.—Section 1212(f) of the Energy Policy Act of 1992 (42 U.S.C. 13317(f)) is amended by striking ''the expiration of'' and all that follows through ''of this section'' and inserting ''September 30, 2023''.

(g) INCREMENTAL HYDROPOWER; AUTHORIZATION OF APPROPRIATIONS.—Section 1212 of the Energy Policy Act of 1992 (42 U.S.C. 13317) is further amended by striking subsection (g) and inserting the following:

''(g) INCREMENTAL HYDROPOWER.—

''(1) PROGRAMS.—Subject to subsection (h)(2), if an incremental hydropower program meets the requirements of this section, as determined by the Secretary, the incremental hydropower program shall be eligible to receive incentive payments under this section.

''(2) DEFINITION OF INCREMENTAL HYDROPOWER.—In this subsection, the term 'incremental hydropower' means additional generating capacity achieved from increased efficiency or additions of new capacity at a hydroelectric facility in existence on the date of enactment of this paragraph.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2003 through 2023.

''(2) LIMITATION ON FUNDS USED FOR INCREMENTAL HYDROPOWER PROGRAMS.—Not more than 30 percent of the amounts made available under paragraph (1) shall be used to carry out programs described in subsection (g)(2).

''(3) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.''.

SEC. 262. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 3 months after the date of enactment of this title, and each year thereafter, the Secretary of Energy shall review the available assessments of renewable energy resources available within the United States, including solar, wind, biomass, ocean, geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies and other relevant factors.

(b) CONTENTS OF REPORTS.—Not later than 1 year after the date of enactment of this title, and each year thereafter, the Secretary shall publish a report based on the assessment under subsection (a). The report shall contain—

(1) a detailed inventory describing the available amount and characteristics of the renewable energy resources, and

(2) such other information as the Secretary of Energy believes would be useful in developing such renewable energy resources, including descriptions of surrounding terrain, population and load centers, nearby energy infrastructure, location of energy and water resources, and available estimates of the costs needed to develop each resource, together with an identification of any barriers to providing adequate transmission for remote sources of renewable energy resources to current and emerging markets, recommendations for removing or addressing such barriers, and ways to provide access to the grid that do not unfairly disadvantage renewable or other energy producers.

SEC. 263. FEDERAL PURCHASE REQUIREMENT.

(a) REQUIREMENT.—The President shall seek to ensure that, to the extent economically feasible and technically practicable, of the total amount of electric energy the Federal Government consumes during any fiscal year—

(1) not less than 3 percent in fiscal years 2003 through 2004,

(2) not less than 5 percent in fiscal years 2005 through 2009, and

(3) not less than 7.5 percent in fiscal year 2010 and each fiscal year thereafter,

shall be renewable energy. The President shall encourage the use of innovative purchasing practices by Federal agencies.

(b) DEFINITION.—For purposes of this section, the term ''renewable energy'' means electric energy generated from solar, wind, biomass, geothermal, fuel cells, municipal solid waste, or additional hydroelectric generation capacity achieved from increased efficiency or additions of new capacity.

(c) TRIBAL POWER GENERATION.—The President shall seek to ensure that, to the extent economically feasible and technically practicable, not less than one-tenth of the amount specified in subsection (a) shall be renewable energy that is generated by an Indian tribe or by a corporation, partnership, or business association which is wholly or majority owned, directly or indirectly, by an Indian tribe. For purposes of this subsection, the term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) BIENNIAL REPORT.—In 2004 and every 2 years thereafter, the Secretary of Energy shall report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress of the Federal Government in meeting the goals established by this section.

SEC. 264. RENEWABLE PORTFOLIO STANDARD.

Title VI of the Public Utility Regulatory Policies Act of 1978 is amended by adding at the end the following:

''SEC. 606. FEDERAL RENEWABLE PORTFOLIO STANDARD.

''(a) MINIMUM RENEWABLE GENERATION REQUIREMENT.—For each calendar year beginning in calendar year 2005, each retail electric supplier shall submit to the Secretary, not later than April 1 of the following calendar year, renewable energy credits in an amount equal to the required annual percentage specified in subsection (b).

''(b) REQUIRED ANNUAL PERCENTAGE.—(1) For calendar years 2005 through 2020, the required annual percentage of the retail electric supplier's base amount that shall be generated from renewable energy resources shall be the percentage specified in the following table:

''Calendar Years	***Required annual percentage***
2005 through 2006	*1.0*
2007 through 2008	*2.2*
2009 through 2010	*3.4*
2011 through 2012	*4.6*
2013 through 2014	*5.8*
2015 through 2016	*7.0*
2017 through 2018	*8.5*
2019 through 2020	*10.0.*

''(2) Not later than January 1, 2015, the Secretary may, by rule, establish required annual percentages in amounts not less than 10.0 for calendar years 2020 through 2030.

''(c) SUBMISSION OF CREDITS.—(1) A retail electric supplier may satisfy the requirements of subsection (a) through the submission of renewable energy credits—

''(A) issued to the retail electric supplier under subsection (d);

''(B) obtained by purchase or exchange under subsection (e); or

''(C) borrowed under subsection (f).

''(2) A credit may be counted toward compliance with subsection (a) only once.

''(d) ISSUANCE OF CREDITS.—(1) The Secretary shall establish, not later than 1 year after the date of enactment of this section, a program to issue, monitor the sale or exchange of, and track renewable energy credits.

''(2) Under the program, an entity that generates electric energy through the use of a renewable energy resource may apply to the Secretary for the issuance of renewable energy credits. The application shall indicate—

''(A) the type of renewable energy resource used to produce the electricity,

''(B) the location where the electric energy was produced, and

''(C) any other information the Secretary determines appropriate.

''(3)(A) Except as provided in paragraphs (B), (C), and (D), the Secretary shall issue to an entity one renewable energy credit for each kilowatt-hour of electric energy the entity generates from the date of enactment of this section and in each subsequent calendar year through the use of a renewable energy resource at an eligible facility.

''(B) For incremental hydropower the credits shall be calculated based on the expected increase in average annual generation resulting from the efficiency improvements or capacity additions. The number of credits shall be calculated using the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility and certified by the Secretary or the Federal Energy Regulatory Commission. The calculation of the credits for incremental hydropower shall not be based on any operational changes at the hydroelectric facility not directly associated with the efficiency improvements or capacity additions.

''(C) The Secretary shall issue two renewable energy credits for each kilowatt-hour of electric energy generated and supplied to the grid in that calendar year through the use of a renewable energy resource at an eligible facility located on Indian land. For purposes of this paragraph, renewable energy generated by biomass cofired with other fuels is eligible for two credits only if the biomass was grown on the land eligible under this paragraph.

''(D) For renewable energy resources produced from a generation offset, the Secretary shall issue two renewable energy credits for each kilowatt-hour generated.

''(E) To be eligible for a renewable energy credit, the unit of electric energy generated through the use of a renewable energy resource may be sold or may be used by the generator. If both a renewable energy resource and a nonrenewable energy resource are used to generate the electric energy, the Secretary shall issue credits based on the proportion of the renewable energy resource used. The Secretary shall identify renewable energy credits by type and date of generation.

''(5) When a generator sells electric energy generated through the use of a renewable energy resource to a retail electric supplier under a contract subject to section 210 of this Act, the retail electric supplier is treated as the generator of the electric energy for the purposes of this section for the duration of the contract.

''(6) The Secretary may issue credits for existing facility offsets to be applied against a retail electric supplier's own required annual percentage. The credits are not tradeable and may only be used in the calendar year generation actually occurs.

''(e) CREDIT TRADING.—A renewable energy credit may be sold or exchanged by the entity to whom issued or by any other entity who acquires the credit. A renewable energy credit for any year that is not used to satisfy the minimum renewable generation requirement of subsection (a) for that year may be carried forward for use within the next 4 years.

''(f) CREDIT BORROWING.—At any time before the end of calendar year 2005, a retail electric supplier that has reason to believe it will not have sufficient renewable energy credits to comply with subsection (a) may—

''(1) submit a plan to the Secretary demonstrating that the retail electric supplier will earn sufficient credits within the next 3 calendar years which, when taken into account, will enable the retail electric supplier's to meet the requirements of subsection (a) for calendar year 2005 and the subsequent calendar years involved; and

''(2) upon the approval of the plan by the Secretary, apply credits that the plan demonstrates will be earned within the next 3 calendar years to meet the requirements of subsection (a) for each calendar year involved.

''(g) CREDIT COST CAP.—The Secretary shall offer renewable energy credits for sale at the lesser of 3 cents per kilowatt-hour or 200 percent of the average market value of credits for the applicable compliance period. On January 1 of each year following calendar year 2005, the Secretary shall adjust for inflation the price charged per credit for such calendar year, based on the Gross Domestic Product Implicit Price Deflator.

''(h) ENFORCEMENT.—The Secretary may bring an action in the appropriate United States district court to impose a civil penalty on a retail electric supplier that does not comply with subsection (a), unless the retail electric supplier was unable to comply with subsection (a) for reasons outside of the supplier's reasonable control (including weather-related damage, mechanical failure, lack of transmission capacity or availability, strikes, lockouts, actions of a governmental authority). A retail electric supplier who does not submit the required number of renewable energy credits under subsection (a) shall be subject to a civil penalty of not more than the greater of 3 cents or 200 percent of the average market value of credits for the compliance period for each renewable energy credit not submitted.

''(i) INFORMATION COLLECTION.—The Secretary may collect the information necessary to verify and audit—

''(1) the annual electric energy generation and renewable energy generation of any entity applying for renewable energy credits under this section,

''(2) the validity of renewable energy credits submitted by a retail electric supplier to the Secretary, and

''(3) the quantity of electricity sales of all retail electric suppliers.

''(j) ENVIRONMENTAL SAVINGS CLAUSE.—Incremental hydropower shall be subject to all applicable environmental laws and licensing and regulatory requirements.

''(k) STATE SAVINGS CLAUSE.—This section does not preclude a State from requiring additional renewable energy generation in that State, or from specifying technology mix.

''(l) DEFINITIONS.—For purposes of this section:

''(1) BIOMASS.—The term 'biomass' means any organic material that is available on a renewable or recurring basis, including dedicated energy crops, trees grown for energy production, wood waste and wood residues, plants (including aquatic plants, grasses, and agricultural crops), residues, fibers, animal wastes and other organic waste materials, and fats and oils, except that with respect to material removed from National Forest System lands the term includes only organic material from—

''(A) thinnings from trees that are less than 12 inches in diameter;

''(B) slash;

''(C) brush; and

''(D) mill residues.

''(2) ELIGIBLE FACILITY.—The term 'eligible facility' means—

''(A) a facility for the generation of electric energy from a renewable energy resource that is placed in service on or after the date of enactment of this section; or

''(B) a repowering or cofiring increment that is placed in service on or after the date of enactment of this section at a facility for the generation of electric energy from a renewable energy resource that was placed in service before that date.

''(3) ELIGIBLE RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means solar, wind, ocean, or geothermal energy, biomass (excluding solid waste and paper that is commonly recycled), landfill gas, a generation offset, or incremental hydropower.

''(4) GENERATION OFFSET.—The term 'generation offset' means reduced electricity usage metered at a site where a customer consumes energy from a renewable energy technology.

''(5) EXISTING FACILITY OFFSET.—The term 'existing facility offset' means renewable energy

generated from an existing facility, not classified as an eligible facility, that is owned or under contract to a retail electric supplier on the date of enactment of this section.

''(6) INCREMENTAL HYDROPOWER.—The term 'incremental hydropower' means additional generation that is achieved from increased efficiency or additions of capacity after the date of enactment of this section at a hydroelectric dam that was placed in service before that date.

''(7) INDIAN LAND.—The term 'Indian land' means—

''(A) any land within the limits of any Indian reservation, pueblo, or rancheria,

''(B) any land not within the limits of any Indian reservation, pueblo, or rancheria title to which was on the date of enactment of this paragraph either held by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation,

''(C) any dependent Indian community, and

''(D) any land conveyed to any Alaska Native corporation under the Alaska Native Claims Settlement Act.

''(8) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(9) RENEWABLE ENERGY.—The term 'renewable energy' means electric energy generated by a renewable energy resource.

''(10) RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means solar, wind, ocean, or geothermal energy, biomass (including municipal solid waste), landfill gas, a generation offset, or incremental hydropower.

''(11) REPOWERING OR COFIRING INCREMENT.—The term 'repowering or cofiring increment' means the additional generation from a modification that is placed in service on or after the date of enactment of this section to expand electricity production at a facility used to generate electric energy from a renewable energy resource or to cofire biomass that was placed in service before the date of enactment of this section, or the additional generation above the average generation in the 3 years preceding the date of enactment of this section, to expand electricity production at a facility used to generate electric energy from a renewable energy resource or to cofire biomass that was placed in service before the date of enactment of this section.

''(12) RETAIL ELECTRIC SUPPLIER.—The term 'retail electric supplier' means a person that sells electric energy to electric consumers and sold not less than 1,000,000 megawatt-hours of electric energy to electric consumers for purposes other than resale during the preceding calendar year; except that such term does not include the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or a rural electric cooperative.

''(13) RETAIL ELECTRIC SUPPLIER'S BASE AMOUNT.—The term 'retail electric supplier's base amount' means the total amount of electric energy sold by the retail electric supplier to electric customers during the most recent calendar year for which information is available, excluding electric energy generated by—

''(A) an eligible renewable energy resource;

''(B) municipal solid waste; or

''(C) a hydroelectric facility.

''(m) SUNSET.—This section expires December 31, 2030.''.

SEC. 265. RENEWABLE ENERGY ON FEDERAL LAND.

(a) COST-SHARE DEMONSTRATION PROGRAM.—Within 12 months after the date of enactment of this section, the Secretaries of the Interior, Agriculture, and Energy shall develop guidelines for a cost-share demonstration program for the development of wind and solar energy facilities on Federal land.

(b) DEFINITION OF FEDERAL LAND.—As used in this section, the term ''Federal land'' means land owned by the United States that is subject to the operation of the mineral leasing laws; and is either—

(1) public land as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (42 U.S.C. 1702(e)); or

(2) a unit of the National Forest System as that term is used in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

(c) RIGHTS-OF-WAY.—The demonstration program shall provide for the issuance of rights-of-way pursuant to the provisions of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.) by the Secretary of the Interior with respect to Federal land under the jurisdiction of the Department of the Interior, and by the Secretary of Agriculture with respect to Federal lands under the jurisdiction of the Department of Agriculture.

(d) AVAILABLE SITES.—For purposes of this demonstration program, the issuance of rights-of-way shall be limited to areas—

(1) of high energy potential for wind or solar development;

(2) that have been identified by the wind or solar energy industry, through a process of nomination, application, or otherwise, as being of particular interest to one or both industries;

(3) that are not located within roadless areas;

(4) where operation of wind or solar facilities would be compatible with the scenic, recreational, environmental, cultural, or historic values of the Federal land, and would not require the construction of new roads for the siting of lines or other transmission facilities; and

(5) where issuance of the right-of-way is consistent with the land and resource management plans of the relevant land management agencies.

(e) COST-SHARE PAYMENTS BY DOE.—The Secretary of Energy, in cooperation with the Secretary of the Interior with respect to Federal land under the jurisdiction of the Department of the Interior, and the Secretary of Agriculture with respect to Federal land under the jurisdiction of the Department of Agriculture, shall determine if the portion of a project on Federal land is eligible for financial assistance pursuant to this section. Only those projects that are consistent with the requirements of this section and further the purposes of this section shall be eligible. In the event a project is selected for financial assistance, the Secretary of Energy shall provide no more than 15 percent of the costs of the project on the Federal land, and the remainder of the costs shall be paid by non-Federal sources.

(f) REVISION OF LAND USE PLANS.—The Secretary of the Interior shall consider development of wind and solar energy, as appropriate, in revisions of land use plans under section 202 of the Federal Land Policy and Management Act of 1976 (42 U.S.C. 1712); and the Secretary of Agriculture shall consider development of wind and solar energy, as appropriate, in revisions of land and resource management plans under section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604). Nothing in this subsection shall preclude the issuance of a right-of-way for the development of a wind or solar energy project prior to the revision of a land use plan by the appropriate land management agency.

(g) REPORT TO CONGRESS.—Within 24 months after the date of enactment of this section, the Secretary of the Interior shall develop and report to Congress recommendations on any statutory or regulatory changes the Secretary believes would assist in the development of renewable energy on Federal land. The report shall include—

(1) a five-year plan developed by the Secretary of the Interior, in cooperation with the Secretary of Agriculture, for encouraging the development of wind and solar energy on Federal land in an environmentally sound manner; and

(2) an analysis of—

(A) whether the use of rights-of-ways is the best means of authorizing use of Federal land for the development of wind and solar energy, or whether such resources could be better developed through a leasing system, or other method;

(B) the desirability of grants, loans, tax credits or other provisions to promote wind and solar energy development on Federal land; and

(C) any problems, including environmental concerns, which the Secretary of the Interior or the Secretary of Agriculture have encountered in managing wind or solar energy projects on Federal land, or believe are likely to arise in relation to the development of wind or solar energy on Federal land;

(3) a list, developed in consultation with the Secretaries of Energy and Defense, of lands under the jurisdiction of the Departments of Energy and Defense that would be suitable for development for wind or solar energy, and recommended statutory and regulatory mechanisms for such development.

(h) NATIONAL ACADEMY OF SCIENCES STUDY.—Within 90 days after the enactment of this Act, the Secretary of the Interior shall contract with the National Academy of Sciences to study the potential for the development of wind, solar, and ocean energy on the Outer Continental Shelf; assess existing Federal authorities for the development of such resources; and recommend statutory and regulatory mechanisms for such development. The results of the study shall be transmitted to Congress within 24 months after the enactment of this Act.

Subtitle F—General Provisions

SEC. 271. CHANGE 3 CENTS TO 1.5 CENTS.

Not withstanding any other provision in this Act, ''3 cents'' shall be considered by law to be ''1.5 cents'' in any place ''3 cents'' appears in title II of this Act.

SEC. 272. BONNEVILLE POWER ADMINISTRATION BONDS.

Section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838k) is amended—

(1) by striking the section heading and all that follows through ''(a) The Administrator'' and inserting the following:

''SEC. 13. BONNEVILLE POWER ADMINISTRATION BONDS.

''(a) BONDS.—

''(1) IN GENERAL.—The Administrator''; and

(2) by adding at the end the following:

''(2) ADDITIONAL BORROWING AUTHORITY.—In addition to the borrowing authority of the Administrator authorized under paragraph (1) or any other provision of law, an additional $1,300,000,000 is made available, to remain outstanding at any one time—

''(A) to provide funds to assist in financing the construction, acquisition, and replacement of the transmission system of the Bonneville Power Administration; and

''(B) to implement the authorities of the Administrator under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.).''.

TITLE III—HYDROELECTRIC RELICENSING

SEC. 301. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) ALTERNATIVE MANDATORY CONDITIONS.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following:

''(h)(1) Whenever any person applies for a license for any project works within any reservation of the United States under subsection (e), and the Secretary of the department under whose supervision such reservation falls (in this subsection referred to as the 'Secretary') shall

deem a condition to such license to be necessary under the first proviso of such section, the license applicant may propose an alternative condition.

''(2) Notwithstanding the first proviso of subsection (e), the Secretary of the department under whose supervision the reservation falls shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, that the alternative condition—

''(A) provides for the adequate protection and utilization of the reservation; and

''(B) will either—

''(i) cost less to implement, or

''(ii) result in improved operation of the project works for electricity production as compared to the condition initially deemed necessary by the Secretary.

''(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under subsection (e) or alternative condition it accepts under this subsection a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this subsection, including the effects of the condition accepted and alternatives not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

''(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative conditions.''.

(b) ALTERNATIVE FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by—

(1) inserting ''(a)'' before the first sentence; and

(2) adding at the end the following:

''(b)(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under this section, the license applicant or the licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway.

''(2) Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee, that the alternative—

''(A) will be no less protective of the fish resources than the fishway initially prescribed by the Secretary; and

''(B) will either—

''(i) cost less to implement, or

''(ii) result in improved operation of the project works for electricity production as compared to the fishway initially prescribed by the Secretary.

''(3) The Secretary shall submit into the public record of the Commission proceeding with any prescription under subsection (a) or alternative prescription it accepts under this subsection a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this subsection, including the effects of the prescription accepted or alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

''(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative prescriptions.''.

(c) TIME OF FILING APPLICATION.—Section 15(c)(1) of the Federal Power Act (16 U.S.C. 808(c)(1)) is amended by striking the first sentence and inserting the following:

''(1) Each application for a new license pursuant to this section shall be filed with the Commission—

''(A) at least 24 months before the expiration of the term of the existing license in the case of licenses that expire prior to 2008; and

''(B) at least 36 months before the expiration of the term of the existing license in the case of licenses that expire in 2008 or any year thereafter.''.

TITLE IV—INDIAN ENERGY

SEC. 401. COMPREHENSIVE INDIAN ENERGY PROGRAM.

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501–3506) is amended by adding after section 2606 the following:

''SEC. 2607. COMPREHENSIVE INDIAN ENERGY PROGRAM.

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'Director' means the Director of the Office of Indian Energy Policy and Programs established by section 217 of the Department of Energy Organization Act, and

''(2) the term 'Indian land' means—

''(A) any land within the limits of an Indian reservation, pueblo, or rancheria;

''(B) any land not within the limits of an Indian reservation, pueblo, or rancheria whose title is held—

''(i) in trust by the United States for the benefit of an Indian tribe,

''(ii) by an Indian tribe subject to restriction by the United States against alienation, or

''(iii) by a dependent Indian community; and

''(C) land conveyed to an Alaska Native Corporation under the Alaska Native Claims Settlement Act.

''(b) INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE.—(1) The Director shall establish programs within the Office of Indian Energy Policy and Programs to assist Indian tribes in meeting their energy education, research and development, planning, and management needs.

''(2) The Director may make grants, on a competitive basis, to an Indian tribe for—

''(A) renewable energy, energy efficiency, and conservation programs;

''(B) studies and other activities supporting tribal acquisition of energy supplies, services, and facilities;

''(C) planning, constructing, developing, operating, maintaining, and improving tribal electrical generation, transmission, and distribution facilities; and

''(D) developing, constructing, and interconnecting electric power transmission facilities with transmission facilities owned and operated by a Federal power marketing agency or an electric utility that provides open access transmission service.

''(3) The Director may develop, in consultation with Indian tribes, a formula for making grants under this section. The formula may take into account the following—

''(A) the total number of acres of Indian land owned by an Indian tribe;

''(B) the total number of households on the Indian tribe's Indian land;

''(C) the total number of households on the Indian tribe's Indian land that have no electricity service or are under-served; and

''(D) financial or other assets available to the Indian tribe from any source.

''(4) In making a grant under paragraph (2), the Director shall give priority to an application received from an Indian tribe that is not served or is served inadequately by an electric utility, as that term is defined in section 3(4) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(4)), or by a person, State agency, or any other non-Federal entity that owns or operates a local distribution facility used for the sale of electric energy to an electric consumer.

''(5) There are authorized to be appropriated to the Department of Energy such sums as may be necessary to carry out the purposes of this section.

''(6) The Secretary is authorized to promulgate such regulations as the Secretary determines to be necessary to carry out the provisions of this subsection.

''(c) LOAN GUARANTEE PROGRAM.—

''(1) AUTHORITY.—The Secretary may guarantee not more than 90 percent of the unpaid principal and interest due on any loan made to any Indian tribe for energy development, including the planning, development, construction, and maintenance of electrical generation plants, and for transmission and delivery mechanisms for electricity produced on Indian land. A loan guaranteed under this subsection shall be made by—

''(A) a financial institution subject to the examination of the Secretary; or

''(B) an Indian tribe, from funds of the Indian tribe, to another Indian tribe.

''(2) AVAILABILITY OF APPROPRIATIONS.—Amounts appropriated to cover the cost of loan guarantees shall be available without fiscal year limitation to the Secretary to fulfill obligations arising under this subsection.

''(3) AUTHORIZATION OF APPROPRIATIONS.—(A) There are authorized to be appropriated to the Secretary such sums as may be necessary to cover the cost of loan guarantees, as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)).

''(B) There are authorized to be appropriated to the Secretary such sums as may be necessary to cover the administrative expenses related to carrying out the loan guarantee program established by this subsection.

''(4) LIMITATION ON AMOUNT.—The aggregate outstanding amount guaranteed by the Secretary of Energy at any one time under this subsection shall not exceed $2,000,000,000.

''(5) REGULATIONS.—The Secretary is authorized to promulgate such regulations as the Secretary determines to be necessary to carry out the provisions of this subsection.

''(d) INDIAN ENERGY PREFERENCE.—(1) An agency or department of the United States Government may give, in the purchase of electricity, oil, gas, coal, or other energy product or by-product, preference in such purchase to an energy and resource production enterprise, partnership, corporation, or other type of business organization majority or wholly owned and controlled by a tribal government.

''(2) In implementing this subsection, an agency or department shall pay no more than the prevailing market price for the energy product or by-product and shall obtain no less than existing market terms and conditions.

''(e) EFFECT ON OTHER LAWS.—This section does not—

''(1) limit the discretion vested in an Administrator of a Federal power marketing agency to market and allocate Federal power, or

''(2) alter Federal laws under which a Federal power marketing agency markets, allocates, or purchases power.''.

SEC. 402. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

Title II of the Department of Energy Organization Act is amended by adding at the end the following:

''OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

''SEC. 217. (a) There is established within the Department an Office of Indian Energy Policy and Programs. This Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at the rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) The Director shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

''(1) promote tribal energy efficiency and utilization;

''(2) modernize and develop, for the benefit of Indian tribes, tribal energy and economic infrastructure related to natural resource development and electrification;

''(3) preserve and promote tribal sovereignty and self determination related to energy matters and energy deregulation;

''(4) lower or stabilize energy costs; and

''(5) electrify tribal members' homes and tribal lands.

''(c) The Director shall carry out the duties assigned the Secretary or the Director under title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.).''.

SEC. 403. CONFORMING AMENDMENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 2603(c) of the Energy Policy Act of 1992 (25 U.S.C. 3503(c)) is amended to read as follows:

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.''.

(b) TABLE OF CONTENTS.—The table of contents of the Department of Energy Act is amended by inserting after the item relating to section 216 the following new item:

''Sec. 217. Office of Indian Energy Policy and Programs.''.

(c) EXECUTIVE SCHEDULE.—Section 5315 of title 5, United States Code, is amended by inserting ''Director, Office of Indian Energy Policy and Programs, Department of Energy.'' after ''Inspector General, Department of Energy.''.

SEC. 404. SITING ENERGY FACILITIES ON TRIBAL LANDS.

(a) DEFINITIONS.—For purposes of this section:

(1) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, except that such term does not include any Regional Corporation as defined in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g)).

(2) INTERESTED PARTY.—The term ''interested party'' means a person whose interests could be adversely affected by the decision of an Indian tribe to grant a lease or right-of-way pursuant to this section.

(3) PETITION.—The term ''petition'' means a written request submitted to the Secretary for the review of an action (or inaction) of the Indian tribe that is claimed to be in violation of the approved tribal regulations.

(4) RESERVATION.—The term ''reservation'' means—

(A) with respect to a reservation in a State other than Oklahoma, all land that has been set aside or that has been acknowledged as having been set aside by the United States for the use of an Indian tribe, the exterior boundaries of which are more particularly defined in a final tribal treaty, agreement, executive order, Federal statute, secretarial order, or judicial determination;

(B) with respect to a reservation in the State of Oklahoma, all land that is—

(i) within the jurisdictional area of an Indian tribe, and

(ii) within the boundaries of the last reservation of such tribe that was established by treaty, executive order, or secretarial order.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) TRIBAL LANDS.—The term 'tribal lands' means any tribal trust lands, or other lands owned by an Indian tribe that are within such tribe's reservation.

(b) LEASES INVOLVING GENERATION, TRANSMISSION, DISTRIBUTION OR ENERGY PROCESSING FACILITIES.—An Indian tribe may grant a lease of tribal land for electric generation, transmission, or distribution facilities, or facilities to process or refine renewable or nonrenewable energy resources developed on tribal lands, and such leases shall not require the approval of the Secretary if the lease is executed under tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed 30 years.

(c) RIGHTS-OF-WAY FOR ELECTRIC GENERATION, TRANSMISSION, DISTRIBUTION OR ENERGY PROCESSING FACILITIES.—An Indian tribe may grant a right-of-way over tribal lands for a pipeline or an electric transmission or distribution line without separate approval by the Secretary, if—

(1) the right-of-way is executed under and complies with tribal regulations approved by the Secretary and the term of the right-of-way does not exceed 30 years; and

(2) the pipeline or electric transmission or distribution line serves—

(A) an electric generation, transmission or distribution facility located on tribal land, or

(B) a facility located on tribal land that processes or refines renewable or nonrenewable energy resources developed on tribal lands.

(d) RENEWALS.—Leases or rights-of-way entered into under this subsection may be renewed at the discretion of the Indian tribe in accordance with the requirements of this section.

(e) TRIBAL REGULATION REQUIREMENTS.—(1) The Secretary shall have the authority to approve or disapprove tribal regulations required under this subsection. The Secretary shall approve such tribal regulations if they are comprehensive in nature, including provisions that address—

(A) securing necessary information from the lessee or right-of-way applicant;

(B) term of the conveyance;

(C) amendments and renewals;

(D) consideration for the lease or right-of-way;

(E) technical or other relevant requirements;

(F) requirements for environmental review as set forth in paragraph (3);

(G) requirements for complying with all applicable environmental laws; and

(H) final approval authority.

(2) No lease or right-of-way shall be valid unless authorized in compliance with the approved tribal regulations.

(3) An Indian tribe, as a condition of securing Secretarial approval as contemplated in paragraph (1), must establish an environmental review process that includes the following—

(A) an identification and evaluation of all significant environmental impacts of the proposed action as compared to a no action alternative;

(B) identification of proposed mitigation;

(C) a process for ensuring that the public is informed of and has an opportunity to comment on the proposed action prior to tribal approval of the lease or right-of-way; and

(D) sufficient administrative support and technical capability to carry out the environmental review process.

(4) The Secretary shall review and approve or disapprove the regulations of the Indian tribe within 180 days of the submission of such regulations to the Secretary. Any disapproval of such regulations by the Secretary shall be accompanied by written documentation that sets forth the basis for the disapproval. The 180-day period may be extended by the Secretary after consultation with the Indian tribe.

(5) If the Indian tribe executes a lease or right-of-way pursuant to tribal regulations required under this subsection, the Indian tribe shall provide the Secretary with—

(A) a copy of the lease or right-of-way document and all amendments and renewals thereto; and

(B) in the case of regulations or a lease or right-of-way that permits payment to be made directly to the Indian tribe, documentation of the payments sufficient to enable the Secretary to discharge the trust responsibility of the United States as appropriate under existing law.

(6) The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under this subsection, including the Indian tribe.

(7)(A) An interested party may, after exhaustion of tribal remedies, submit, in a timely manner, a petition to the Secretary to review the compliance of the Indian tribe with any tribal regulations approved under this subsection. If upon such review, the Secretary determines that the regulations were violated, the Secretary may take such action as may be necessary to remedy the violation, including rescinding or holding the lease or right-of-way in abeyance until the violation is cured. The Secretary may also rescind the approval of the tribal regulations and reassume the responsibility for approval of leases or rights-of-way associated with the facilities addressed in this section.

(B) If the Secretary seeks to remedy a violation described in subparagraph (A), the Secretary shall—

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide the Indian tribe with a written notice of the alleged violation together with such written determination; and

(iii) prior to the exercise of any remedy or the rescission of the approval of the regulations involved and reassumption of the lease or right-of-way approval responsibility, provide the Indian tribe with a hearing and a reasonable opportunity to cure the alleged violation.

(C) The tribe shall retain all rights to appeal as provided by regulations promulgated by the Secretary.

(f) AGREEMENTS.—(1) Agreements between an Indian tribe and a business entity that are directly associated with the development of electric generation, transmission or distribution facilities, or facilities to process or refine renewable or nonrenewable energy resources developed on tribal lands, shall not separately require the approval of the Secretary pursuant to section 18 of title 25, United States Code, so long as the activity that is the subject of the agreement has been the subject of an environmental review process pursuant to subsection (e) of this section.

(2) The United States shall not be liable for any losses or damages sustained by any party, including the Indian tribe, that are associated with an agreement entered into under this subsection.

(g) DISCLAIMER.—Nothing in this section is intended to modify or otherwise affect the applicability of any provision of the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a–396g); Indian Mineral Development Act of 1982 (25 U.S.C. 2101–2108); Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328); any amendments thereto; or any other laws not specifically addressed in this section.

SEC. 405. INDIAN MINERAL DEVELOPMENT ACT REVIEW.

(a) IN GENERAL.—The Secretary of the Interior shall conduct a review of the activities that have been conducted by the governments of Indian tribes under the authority of the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to the Committee on Resources of the House of Representatives and the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate a report containing—

(1) the results of the review;

(2) recommendations designed to help ensure that Indian tribes have the opportunity to develop their nonrenewable energy resources; and

(3) an analysis of the barriers to the development of energy resources on Indian land, including Federal policies and regulations, and make recommendations regarding the removal of those barriers.

(c) CONSULTATION.—The Secretary shall consult with Indian tribes on a government-to-government basis in developing the report and recommendations as provided in this subsection.

SEC. 406. RENEWABLE ENERGY STUDY.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, and once every 2 years thereafter, the Secretary of Energy shall transmit to the Committees on Energy and Commerce and Resources of the House of Representatives and the Committees on Energy and Natural Resources and Indian Affairs of the Senate a report on energy consumption and renewable energy development potential on Indian land. The report shall identify barriers to the development of renewable energy by Indian tribes, including Federal policies and regulations, and make recommendations regarding the removal of such barriers.

(b) CONSULTATION.—The Secretary shall consult with Indian tribes on a government-to-government basis in developing the report and recommendations as provided in this section.

SEC. 407. FEDERAL POWER MARKETING ADMINISTRATIONS.

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501) (as amended by section 201) is amended by adding at the end the following:

"SEC. 2608. FEDERAL POWER MARKETING ADMINISTRATIONS.

''(a) DEFINITION OF ADMINISTRATOR.—In this section, the term 'Administrator' means—

''(1) the Administrator of the Bonneville Power Administration; or

''(2) the Administrator of the Western Area Power Administration.

''(b) ASSISTANCE FOR TRANSMISSION STUDIES.—(1) Each Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power. The costs of such technical assistance shall be funded—

''(A) by the Administrator using non-reimbursable funds appropriated for this purpose, or

''(B) by the Indian tribe.

''(2) PRIORITY FOR ASSISTANCE FOR TRANSMISSION STUDIES.—In providing discretionary assistance to Indian tribes under paragraph (1), each Administrator shall give priority in funding to Indian tribes that have limited financial capability to conduct such studies.

''(c) POWER ALLOCATION STUDY.—(1) Not later than 2 years after the date of enactment of this Act, the Secretary of Energy shall transmit to the Committees on Energy and Commerce and Resources of the House of Representatives and the Committees on Energy and Natural Resources and Indian Affairs of the Senate a report on Indian tribes' utilization of Federal power allocations of the Western Area Power Administration, or power sold by the Southwestern Power Administration, and the Bonneville Power Administration to or for the benefit of Indian tribes in their service areas. The report shall identify—

''(A) the amount of power allocated to tribes by the Western Area Power Administration, and how the benefit of that power is utilized by the tribes;

''(B) the amount of power sold to tribes by other Power Marketing Administrations; and

''(C) existing barriers that impede tribal access to and utilization of Federal power, and opportunities to remove such barriers and improve the ability of the Power Marketing Administration to facilitate the utilization of Federal power by Indian tribes.

''(2) The Power Marketing Administrations shall consult with Indian tribes on a government-to-government basis in developing the report provided in this section.

''(d) AUTHORIZATION FOR APPROPRIATION.—There are authorized to be appropriated to the Secretary of Energy such sums as may be necessary to carry out the purposes of this section.''.

SEC. 408. FEASIBILITY STUDY OF COMBINED WIND AND HYDROPOWER DEMONSTRATION PROJECT.

(a) STUDY.—The Secretary of Energy, in coordination with the Secretary of the Army and the Secretary of the Interior, shall conduct a study of the cost and feasibility of developing a demonstration project that would use wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

(b) SCOPE OF STUDY.—The study shall—

(1) determine the feasibility of the blending of wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers;

(2) review historical purchase requirements and projected purchase requirements for firming and the patterns of availability and use of firming energy;

(3) assess the wind energy resource potential on tribal lands and projected cost savings through a blend of wind and hydropower over a thirty-year period;

(4) include a preliminary interconnection study and a determination of resource adequacy of the Upper Great Plains Region of the Western Area Power Administration;

(5) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation; and

(6) include an independent tribal engineer as a study team member.

(c) REPORT.—The Secretary of Energy and Secretary of the Army shall submit a report to Congress not later than 1 year after the date of enactment of this title. The Secretaries shall include in the report—

(1) an analysis of the potential energy cost savings to the customers of the Western Area Power Administration through the blend of wind and hydropower;

(2) an evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production and provide Missouri River management flexibility;

(3) recommendations for a demonstration project which the Western Area Power Administration could carry out in partnership with an Indian tribal government or tribal government energy consortium to demonstrate the feasibility and potential of using wind energy produced on Indian lands to supply firming energy to the Western Area Power Administration or other Federal power marketing agency; and

(4) an identification of the economic and environmental benefits to be realized through such a Federal-tribal partnership and identification of how such a partnership could contribute to the energy security of the United States.

(d) CONSULTATION.—The Secretary shall consult with Indian tribes on a government-to-government basis in developing the report and recommendations provided in this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000 to carry out this section, which shall remain available until expended. All costs incurred by the Western Area Power Administration associated with performing the tasks required under this section shall be nonreimbursable.

TITLE V—NUCLEAR POWER

Subtitle A—Price-Anderson Act Reauthorization

SEC. 501. SHORT TITLE.

This subtitle may be cited as the ''Price-Anderson Amendments Act of 2003''.

SEC. 502. EXTENSION OF INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking ''LICENSES'' and inserting ''LICENSEES''; and

(2) by striking ''August 1, 2002'' each place it appears and inserting ''August 1, 2012''.

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking '', until August 1, 2002,''.

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking ''August 1, 2002'' each place it appears and inserting ''August 1, 2012''.

SEC. 503. DEPARTMENT OF ENERGY LIABILITY LIMIT.

(a) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (2) and inserting the following:

''(2) In agreements of indemnification entered into under paragraph (1), the Secretary—

''(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

''(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with such contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.''.

(b) CONTRACT AMENDMENTS.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further amended by striking paragraph (3) and inserting the following:

''(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of the enactment of the Price-Anderson Amendments Act of 2003, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.''.

(c) LIABILITY LIMIT.—Section 170e.(1)(B) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is amended—

(1) by striking ''the maximum amount of financial protection required under subsection b. or''; and

(2) by striking ''paragraph (3) of subsection d., whichever amount is more'' and inserting ''paragraph (2) of subsection d.''.

SEC. 504. INCIDENTS OUTSIDE THE UNITED STATES.

(a) AMOUNT OF INDEMNIFICATION.—Section 170d.(5) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

(b) LIABILITY LIMIT.—Section 170e.(4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

SEC. 505. REPORTS.

Section 170p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by striking ''August 1, 1998'' and inserting ''August 1, 2008''.

SEC. 506. INFLATION ADJUSTMENT.

Section 170t. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(t)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by adding after paragraph (1) the following:

''(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2002, in accordance with the aggregate percentage change in the Consumer Price Index since—

''(A) that date, in the case of the first adjustment under this paragraph; or

''(B) the previous adjustment under this paragraph.''.

SEC. 507. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234Ab.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NOT-FOR-PROFIT INSTITUTIONS.—Subsection d. of section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as follows:

''d.(1) Notwithstanding subsection a., in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties assessed under subsection a. may not exceed the total amount of fees paid within any one-year period (as determined by the Secretary) under the contract under which the violation occurs.

''(2) For purposes of this section, the term 'not-for-profit' means that no part of the net earnings of the contractor, subcontractor, or supplier inures, or may lawfully inure, to the benefit of any natural person or for-profit artificial person.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall not apply to any violation of the Atomic Energy Act of 1954 occurring under a contract entered into before the date of enactment of this section.

SEC. 508. TREATMENT OF MODULAR REACTORS.

Section 170b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended by adding at the end the following:

''(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

''(B) A combination of facilities referred to in subparagraph (A) is two or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.''.

SEC. 509. EFFECTIVE DATE.

The amendments made by sections 503(a) and 504 do not apply to any nuclear incident that occurs before the date of the enactment of this subtitle.

Subtitle B—Miscellaneous Provisions

SEC. 511. URANIUM SALES.

(a) INVENTORY SALES.—Section 3112(d) of the USEC Privatization Act (42 U.S.C. 2297h–10(d)) is amended to read as follows:

''(d) INVENTORY SALES.—(1) In addition to the transfers authorized under subsections (b), (c), and (e), the Secretary may, from time to time, sell or transfer uranium (including natural uranium concentrates, natural uranium hexafluoride, enriched uranium, and depleted uranium) from the Department of Energy's stockpile.

''(2) Except as provided in subsections (b), (c), and (e), the Secretary may not deliver uranium in any form for consumption by end users in any year in excess of the following amounts:

''Annual Maximum Deliveries to End Users

''Year:	(Million lbs. U_3O_8 equivalent)
2003 through 2009–	3
2010–	5
2011–	5
2012–	7
2013 and each year thereafter–	10.

''(3) Except as provided in subsections (b), (c), and (e), no sale or transfer of uranium in any form shall be made unless—

''(A) the President determines that the material is not necessary for national security needs;

''(B) the Secretary determines, based on the written views of the Secretary of State and the Assistant to the President for National Security Affairs, that the sale or transfer will not adversely affect the national security interests of the United States;

''(C) the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement; and

''(D) the price paid to the Secretary will not be less than the fair market value of the material.''.

(b) EXEMPT TRANSFERS AND SALES.—Section 3112(e) of the USEC Privatization Act (42 U.S.C. 2297h–10(e)) is amended to read as follows:

''(e) EXEMPT SALES OR TRANSFERS.—Notwithstanding subsection (d)(2), the Secretary may transfer or sell uranium—

''(1) to the Tennessee Valley Authority for use pursuant to the Department of Energy's highly enriched uranium or tritium program, to the extent provided by law;

''(2) to research and test reactors under the University Reactor Fuel Assistance and Support Program or the Reduced Enrichment for Research and Test Reactors Program;

''(3) to USEC Inc. to replace contaminated uranium received from the Department of Energy when the United States Enrichment Corporation was privatized;

''(4) to any person for emergency purposes in the event of a disruption in supply to end users in the United States; and

''(5) to any person for national security purposes, as determined by the Secretary.''.

SEC. 512. REAUTHORIZATION OF THORIUM REIMBURSEMENT.

(a) REIMBURSEMENT OF THORIUM LICENSEES.—Section 1001(b)(2)(C) of the Energy Policy Act of 1992 (42 U.S.C. 2296a) is amended—

(1) by striking ''$140,000,000'' and inserting ''$365,000,000''; and

(2) by adding at the end the following: ''Such payments shall not exceed the following amounts:

''(i) $90,000,000 in fiscal year 2002.
''(ii) $55,000,000 in fiscal year 2003.
''(iii) $20,000,000 in fiscal year 2004.
''(iv) $20,000,000 in fiscal year 2005.
''(v) $20,000,000 in fiscal year 2006.
''(vi) $20,000,000 in fiscal year 2007.

Any amounts authorized to be paid in a fiscal year under this subparagraph that are not paid in that fiscal year may be paid in subsequent fiscal years.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1003(a) of the Energy Policy Act of 1992 (42 U.S.C. 2296a–2) is amended by striking ''$490,000,000'' and inserting ''$715,000,000''.

(c) DECONTAMINATION AND DECOMMISSIONING FUND.—Section 1802(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2297g–1(a)) is amended—

(1) by striking ''$488,333,333'' and inserting ''$518,233,333''; and

(2) by inserting after ''inflation'' the following: ''beginning on the date of enactment of the Energy Policy Act of 1992''.

SEC. 513. FAST FLUX TEST FACILITY.

The Secretary of Energy shall not reactivate the Fast Flux Test Facility to conduct—

(1) any atomic energy defense activity,

(2) any space-related mission, or

(3) any program for the production or utilization of nuclear material if the Secretary has determined, in a record of decision, that the program can be carried out at existing operating facilities.

SEC. 514. NUCLEAR POWER 2010.

(a) DEFINITIONS.—In this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) OFFICE.—The term ''Office'' means the Office of Nuclear Energy Science and Technology of the Department of Energy.

(3) DIRECTOR.—The term ''Director'' means the Director of the Office of Nuclear Energy Science and Technology of the Department of Energy.

(4) PROGRAM.—The term ''Program'' means the Nuclear Power 2010 Program.

(b) ESTABLISHMENT.—The Secretary shall carry out a program, to be managed by the Director.

(c) PURPOSE.—The program shall aggressively pursue those activities that will result in regulatory approvals and design completion in a phased approach, with joint government/industry cost sharing, which would allow for the construction and startup of new nuclear plants in the United States by 2010.

(d) ACTIVITIES.—In carrying out the program, the Director shall—

(1) issue a solicitation to industry seeking proposals from joint venture project teams comprised of reactor vendors and power generation companies to participate in the Nuclear Power 2010 program;

(2) seek innovative business arrangements, such as consortia among designers, constructors, nuclear steam supply systems and major equipment suppliers, and plant owner/operators, with strong and common incentives to build and operate new plants in the United States;

(3) conduct the Nuclear Power 2010 program consistent with the findings of ''A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010'' issued by the Near-Term Deployment Working Group of the Nuclear Energy Research Advisory Committee of the Department of Energy;

(4) rely upon the expertise and capabilities of the Department of Energy national laboratories and sites in the areas of advanced nuclear fuel cycles and fuels testing, giving consideration to existing lead laboratory designations and the unique capabilities and facilities available at each national laboratory and site;

(5) pursue deployment of both water-cooled and gas-cooled reactor designs on a dual track basis that will provide maximum potential for the success of both;

(6) include participation of international collaborators in research and design efforts where beneficial; and

(7) seek to accomplish the essential regulatory and technical work, both generic and design-specific, to make possible new nuclear plants within this decade.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section such sums as are necessary for fiscal year 2003 and for each fiscal year thereafter.

SEC. 515. OFFICE OF SPENT NUCLEAR FUEL RESEARCH.

(a) FINDINGS.—Congress finds that—

(1) before the Federal Government takes any irreversible action relating to the disposal of spent nuclear fuel, Congress must determine whether the spent fuel in the repository should be treated as waste subject to permanent burial or should be considered an energy resource that is needed to meet future energy requirements; and

(2) national policy on spent nuclear fuel may evolve with time as improved technologies for spent fuel are developed or as national energy needs evolve.

(b) DEFINITIONS.—In this section:

(1) ASSOCIATE DIRECTOR.—The term ''Associate Director'' means the Associate Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Spent Nuclear Fuel Research within the Office of Nuclear Energy Science and Technology of the Department of Energy.

(c) ESTABLISHMENT.—There is established an Office of Spent Nuclear Fuel Research within the Office of Nuclear Energy Science and Technology of the Department of Energy.

(d) HEAD OF OFFICE.—The Office shall be headed by the Associate Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Nuclear Energy Science and Technology, and compensated at a rate determined by applicable law.

(e) DUTIES OF THE ASSOCIATE DIRECTOR.—

(1) IN GENERAL.—The Associate Director shall be responsible for carrying out an integrated research, development, and demonstration program on technologies for treatment, recycling, and disposal of high-level nuclear radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary.

(2) PARTICIPATION.—The Associate Director shall coordinate the participation of national laboratories, universities, the commercial nuclear industry, and other organizations in the investigation of technologies for the treatment, recycling, and disposal of spent nuclear fuel and high-level radioactive waste.

(3) ACTIVITIES.—The Associate Director shall—

(A) develop a research plan to provide recommendations by 2015;

(B) identify promising technologies for the treatment, recycling, and disposal of spent nuclear fuel and high-level radioactive waste;

(C) conduct research and development activities for promising technologies;

(D) ensure that all activities include as key objectives minimization of proliferation concerns and risk to the health of the general public or site workers, as well as development of cost-effective technologies;

(E) require research on both reactor- and accelerator-based transmutation systems;

(F) require research on advanced processing and separations;

(G) include participation of international collaborators in research efforts, and provide funding to a collaborator that brings unique capabilities not available in the United States if the country in which the collaborator is located is unable to provide for their support; and

(H) ensure that research efforts are coordinated with research on advanced fuel cycles and reactors conducted by the Office of Nuclear Energy Science and Technology.

(f) GRANT AND CONTRACT AUTHORITY.—The Secretary may make grants, or enter into contracts, for the purposes of the research projects and activities described in this section.

(g) REPORT.—The Associate Director shall annually submit to Congress a report on the activities and expenditures of the Office that describes the progress being made in achieving the objectives of this section.

SEC. 516. DECOMMISSIONING PILOT PROGRAM.

(a) PILOT PROGRAM.—The Secretary of Energy shall establish a decommissioning pilot program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas in accordance with the decommissioning activities contained in the August 31, 1998, Department of Energy report on the reactor.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $16,000,000.

Subtitle C—Growth of Nuclear Energy

SEC. 521. COMBINED LICENSE PERIODS.

Section 103c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended—

(1) by striking ''c. Each such'' and inserting the following:

''c. LICENSE PERIOD.—

''(1) IN GENERAL.—Each such''; and

(2) by adding at the end the following:

''(2) COMBINED LICENSES.—In the case of a combined construction and operating license issued under section 185(b), the duration of the operating phase of the license period shall not be less than the duration of the operating license if application had been made for separate construction and operating licenses.''.

Subtitle D—NRC Regulatory Reform

SEC. 531. ANTITRUST REVIEW.

(a) IN GENERAL.—Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by adding at the end the following:

''d. ANTITRUST LAWS.—

''(1) NOTIFICATION.—Except as provided in paragraph (4), when the Commission proposes to issue a license under section 103 or 104b., the Commission shall notify the Attorney General of the proposed license and the proposed terms and conditions of the license.

''(2) ACTION BY THE ATTORNEY GENERAL.—Within a reasonable time (but not more than 90 days) after receiving notification under paragraph (1), the Attorney General shall submit to the Commission and publish in the Federal Register a determination whether, insofar as the Attorney General is able to determine, the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws.

''(3) INFORMATION.—On the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate or necessary to enable the Attorney General to make the determination under paragraph (2).

''(4) APPLICABILITY.—This subsection shall not apply to such classes or type of licenses as the Commission, with the approval of the Attorney General, determines would not significantly affect the activities of a licensee under the antitrust laws.''.

(b) CONFORMING AMENDMENT.—Section 105c. of the Atomic Energy Act of 1954 (42 U.S.C. 2135(c)) is amended by adding at the end the following:

''(9) APPLICABILITY.—This subsection does not apply to an application for a license to construct or operate a utilization facility under section 103 or 104b. that is filed on or after the date of enactment of subsection d.''.

SEC. 532. DECOMMISSIONING.

(a) AUTHORITY OVER FORMER LICENSEES FOR DECOMMISSIONING FUNDING.—Section 161i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended—

(1) by striking ''and (3)'' and inserting ''(3)''; and

(2) by inserting before the semicolon at the end the following: '', and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility''.

(b) TREATMENT OF NUCLEAR REACTOR FINANCIAL OBLIGATIONS.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) TREATMENT OF NUCLEAR REACTOR FINANCIAL OBLIGATIONS.—Notwithstanding any other provision of this title—

''(1) any funds or other assets held by a licensee or former licensee of the Nuclear Regulatory Commission, or by any other person, to satisfy the responsibility of the licensee, former licensee, or any other person to comply with a regulation or order of the Nuclear Regulatory Commission governing the decontamination and decommissioning of a nuclear power reactor licensed under section 103 or 104b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)) shall not be used to satisfy the claim of any creditor in any proceeding under this title, other than a claim resulting from an activity undertaken to satisfy that responsibility, until the decontamination and decommissioning of the nuclear power reactor is completed to the satisfaction of the Nuclear Regulatory Commission;

''(2) obligations of licensees, former licensees, or any other person to use funds or other assets to satisfy a responsibility described in paragraph (1) may not be rejected, avoided, or discharged in any proceeding under this title or in any liquidation, reorganization, receivership, or other insolvency proceeding under Federal or State law; and

''(3) private insurance premiums and standard deferred premiums held and maintained in accordance with section 170b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) shall not be used to satisfy the claim of any creditor in any proceeding under this title, until the indemnification agreement executed in accordance with section 170c. of that Act (42 U.S.C. 2210(c)) is terminated.''.

Subtitle E—NRC Personnel Crisis

SEC. 541. ELIMINATION OF PENSION OFFSET.

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following:

''y. exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.''.

SEC. 542. NRC TRAINING PROGRAM.

(a) IN GENERAL.—In order to maintain the human resource investment and infrastructure of the United States in the nuclear sciences, health physics, and engineering fields, in accordance with the statutory authorities of the Commission relating to the civilian nuclear energy program, the Nuclear Regulatory Commission shall carry out a training and fellowship program to address shortages of individuals with critical safety skills.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2003 through 2006.

(2) AVAILABILITY.—Funds made available under paragraph (1) shall remain available until expended.

DIVISION B—DOMESTIC OIL AND GAS PRODUCTION AND TRANSPORTATION

TITLE VI—OIL AND GAS PRODUCTION

SEC. 601. PERMANENT AUTHORITY TO OPERATE THE STRATEGIC PETROLEUM RESERVE.

(a) AMENDMENT TO TITLE I OF THE ENERGY POLICY AND CONSERVATION ACT.—Title I of the Energy Policy and Conservation Act (42 U.S.C. 6211 et seq.) is amended—

(1) by striking section 166 (42 U.S.C. 6246) and inserting—

''SEC. 166. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part, to remain available until expended.''; and

(2) by striking part E (42 U.S.C. 6251; relating to the expiration of title I of the Act) and its heading.

(b) AMENDMENT TO TITLE II OF THE ENERGY POLICY AND CONSERVATION ACT.—Title II of the Energy Policy and Conservation Act (42 U.S.C. 6271 et seq.) is amended—

(1) by striking section 256(h) (42 U.S.C. 6276(h)) and inserting—

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part, to remain available until expended.'';

(2) by striking section 273(e) (42 U.S.C. 6283(e); relating to the expiration of summer fill and fuel budgeting programs); and

(3) by striking part D (42 U.S.C. 6285; relating to the expiration of title II of the Act) and its heading.

(c) TECHNICAL AMENDMENTS.—The table of contents for the Energy Policy and Conservation Act is amended by striking the items relating to part D of title I and part D of title II.

SEC. 602. FEDERAL ONSHORE LEASING PROGRAMS FOR OIL AND GAS.

(a) TIMELY ACTION ON LEASES AND PERMITS.—To ensure timely action on oil and gas leases and applications for permits to drill on lands otherwise available for leasing, the Secretary of the Interior shall—

(1) ensure expeditious compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(2) improve consultation and coordination with the States; and

(3) improve the collection, storage, and retrieval of information related to such leasing activities.

(b) IMPROVED ENFORCEMENT.—The Secretary shall improve inspection and enforcement of oil and gas activities, including enforcement of terms and conditions in permits to drill.

(c) AUTHORIZATION OF APPROPRIATIONS.—For each of the fiscal years 2003 through 2006, in addition to amounts otherwise authorized to be appropriated for the purpose of carrying out section 17 of the Mineral Leasing Act (30 U.S.C. 226), there are authorized to be appropriated to the Secretary of the Interior—

(1) $40,000,000 for the purpose of carrying out paragraphs (1) through (3) of subsection (a); and

(2) $20,000,000 for the purpose of carrying out subsection (b).

SEC. 603. OIL AND GAS LEASE ACREAGE LIMITATIONS.

Section 27(d)(1) of the Mineral Leasing Act (30 U.S.C. 184(d)(1)) is amended by inserting after ''acreage held in special tar sand areas'' the following: ''as well as acreage under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement, or for which royalty, including compensatory royalty or royalty in kind, was paid in the preceding calendar year,''.

SEC. 604. ORPHANED AND ABANDONED WELLS ON FEDERAL LAND.

(a) ESTABLISHMENT.—(1) The Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall establish a program to ensure within 3 years after the date of enactment of this Act, remediation, reclamation, and closure of orphaned oil and gas wells located on lands administered by the land management agencies within the Department of the Interior and the United States Forest Service that are—

(A) abandoned;

(B) orphaned; or

(C) idled for more than 5 years and having no beneficial use.

(2) The program shall include a means of ranking critical sites for priority in remediation based on potential environmental harm, other land use priorities, and public health and safety.

(3) The program shall provide that responsible parties be identified wherever possible and that the costs of remediation be recovered.

(4) In carrying out the program, the Secretary of the Interior shall work cooperatively with the Secretary of Agriculture and the States within which the Federal lands are located, and shall consult with the Secretary of Energy, and the Interstate Oil and Gas Compact Commission.

(b) PLAN.—Within 6 months from the date of enactment of this section, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall prepare a plan for carrying out the program established under subsection (a). Copies of the plan shall be transmitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Interior $5,000,000 for each of fiscal years 2003 through 2005 to carry out the activities provided for in this section.

SEC. 605. ORPHANED AND ABANDONED OIL AND GAS WELL PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy shall establish a program to provide technical assistance to the various oil and gas producing States to facilitate State efforts over a 10-year period to ensure a practical and economical remedy for environmental problems caused by orphaned and abandoned exploration or production well sites on State and private lands. The Secretary shall work with the States, through the Interstate Oil and Gas Compact Commission, to assist the States in quantifying and mitigating environmental risks of onshore abandoned and orphaned wells on State and private lands.

(b) PROGRAM ELEMENTS.—The program should include—

(1) mechanisms to facilitate identification of responsible parties wherever possible;

(2) criteria for ranking critical sites based on factors such as other land use priorities, potential environmental harm and public visibility; and

(3) information and training programs on best practices for remediation of different types of sites.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy for the activities under this section $5,000,000 for each of fiscal years 2003 through 2005 to carry out the provisions of this section.

SEC. 606. OFFSHORE DEVELOPMENT.

Section 5 of the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1334) is amended by adding at the end the following:

''(k) SUSPENSION OF OPERATIONS FOR SUBSALT EXPLORATION.—Notwithstanding any other provision of law or regulation, the Secretary may grant a request for a suspension of operations under any lease to allow the lessee to reprocess or reinterpret geologic or geophysical data beneath allocthonous salt sheets, when in the Secretary's judgment such suspension is necessary to prevent waste caused by the drilling of unnecessary wells, and to maximize ultimate recovery of hydrocarbon resources under the lease. Such suspension shall be limited to the minimum period of time the Secretary determines is necessary to achieve the objectives of this subsection.''.

SEC. 607. COALBED METHANE STUDY.

(a) STUDY.—The National Academy of Sciences shall conduct a study on the effects of coalbed methane production on surface and water resources.

(b) DATA ANALYSIS.—The study shall analyze available hydrogeologic and water quality data, along with other pertinent environmental or other information to determine—

(1) adverse effects associated with surface or subsurface disposal of waters produced during extraction of coalbed methane;

(2) depletion of groundwater aquifers or drinking water sources associated with production of coalbed methane;

(3) any other significant adverse impacts to surface or water resources associated with production of coalbed methane; and

(4) production techniques or other factors that can mitigate adverse impacts from coalbed methane development.

(c) RECOMMENDATIONS.—The study shall analyze existing Federal and State laws and regulations, and make recommendations as to changes, if any, to Federal law necessary to address adverse impacts to surface or water resources attributable to coalbed methane development.

(d) COMPLETION OF STUDY.—The National Academy of Sciences shall submit the study to the Secretary of the Interior within 18 months after the date of enactment of this Act, and shall make the study available to the public at the same time.

(e) REPORT TO CONGRESS.—The Secretary of the Interior shall report to Congress within 6 months of her receipt of the study on—

(1) the findings and recommendations of the study;

(2) the Secretary's agreement or disagreement with each of its findings and recommendations; and

(3) any recommended changes in funding to address the effects of coalbed methane production on surface and water resources.

SEC. 608. FISCAL POLICIES TO MAXIMIZE RECOVERY OF DOMESTIC OIL AND GAS RESOURCES.

(a) EVALUATION.—The Secretary of Energy, in coordination with the Secretaries of the Interior, Commerce, and Treasury, Indian tribes and the Interstate Oil and Gas Compact Commission, shall evaluate the impact of existing Federal and State tax and royalty policies on the development of domestic oil and gas resources and on revenues to Federal, State, local and tribal governments.

(b) SCOPE.—The evaluation under subsection (a) shall—

(1) analyze the impact of fiscal policies on oil and natural gas exploration, development drilling, and production under different price scenarios, including the impact of the individual and corporate Alternative Minimum Tax, State and local production taxes and fixed royalty rates during low price periods;

(2) assess the effect of existing Federal and State fiscal policies on investment under different geological and developmental circumstances, including but not limited to deepwater environments, subsalt formations, deep and deviated wells, coalbed methane and other unconventional oil and gas formations;

(3) assess the extent to which Federal and State fiscal policies negatively impact the ultimate recovery of resources from existing fields and smaller accumulations in offshore waters, especially in water depths less than 800 meters, of the Gulf of Mexico;

(4) compare existing Federal and State policies with tax and royalty regimes in other countries with particular emphasis on similar geological, developmental and infrastructure conditions; and

(5) evaluate how alternative tax and royalty policies, including counter-cyclical measures, could increase recovery of domestic oil and natural gas resources and revenues to Federal, State, local and tribal governments.

(c) POLICY RECOMMENDATIONS.—Based upon the findings of the evaluation under subsection (a), a report describing the findings and recommendations for policy changes shall be provided to the President, the Congress, the Governors of the member States of the Interstate Oil and Gas Compact Commission, and Indian tribes having an oil and gas lease approved by the Secretary of the Interior. The recommendations should ensure that the public interest in receiving the economic benefits of tax and royalty revenues is balanced with the broader national security and economic interests in maximizing recovery of domestic resources. The report should include recommendations regarding actions to—

(1) ensure stable development drilling during periods of low oil and/or natural gas prices to maintain reserve replacement and deliverability;

(2) minimize the negative impact of a volatile investment climate on the oil and gas service industry and domestic oil and gas exploration and production;

(3) ensure a consistent level of domestic activity to encourage the education and retention of a technical workforce; and

(4) maintain production capability during periods of low oil and/or natural gas prices.

(d) ROYALTY GUIDELINES.—The recommendations required under (c) should include guidelines for private resource holders as to the appropriate level of royalties given geology, development cost, and the national interest in maximizing recovery of oil and gas resources.

(e) REPORT.—The study under subsection (a) shall be completed not later than 18 months after the date of enactment of this section. The report and recommendations required in (c) shall be transmitted to the President, the Congress, Indian tribes, and the Governors of the member States of the Interstate Oil and Gas Compact Commission.

SEC. 609. STRATEGIC PETROLEUM RESERVE.

(a) FULL CAPACITY.—The President shall—

(1) fill the Strategic Petroleum Reserve established pursuant to part B of title I of the Energy

Policy and Conservation Act (42 U.S.C. 6231 et seq.) to full capacity as soon as practicable;

(2) acquire petroleum for the Strategic Petroleum Reserve by the most practicable and cost-effective means, including the acquisition of crude oil the United States is entitled to receive in kind as royalties from production on Federal lands; and

(3) ensure that the fill rate minimizes impacts on petroleum markets.

(b) RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall submit to Congress a plan to—

(1) eliminate any infrastructure impediments that may limit maximum drawdown capability; and

(2) determine whether the capacity of the Strategic Petroleum Reserve on the date of enactment of this section is adequate in light of the increasing consumption of petroleum and the reliance on imported petroleum.

SEC. 610. HYDRAULIC FRACTURING.

Section 1421 of the Safe Drinking Water Act (42 U.S.C. 300h) is amended by adding at the end the following:

''(e) HYDRAULIC FRACTURING FOR OIL AND GAS PRODUCTION.—

''(1) STUDY OF THE EFFECTS OF HYDRAULIC FRACTURING.—

''(A) IN GENERAL.—As soon as practicable, but in no event later than 24 months after the date of enactment of this subsection, the Administrator shall complete a study of the known and potential effects on underground drinking water sources of hydraulic fracturing, including the effects of hydraulic fracturing on underground drinking water sources on a nationwide basis, and within specific regions, States, or portions of States.

''(B) CONSULTATION.—In planning and conducting the study, the Administrator shall consult with the Secretary of the Interior, the Secretary of Energy, the Ground Water Protection Council, affected States, and, as appropriate, representatives of environmental, industry, academic, scientific, public health, and other relevant organizations. Such study may be accomplished in conjunction with other ongoing studies related to the effects of oil and gas production on groundwater resources.

''(C) STUDY ELEMENTS.—The study conducted under subparagraph (A) shall, at a minimum, examine and make findings as to whether—

''(i) such hydraulic fracturing has endangered or will endanger (as defined under subsection (d)(2)) underground drinking water sources, including those sources within specific regions, States or portions of States;

''(ii) there are specific methods, practices, or hydrogeologic circumstances in which hydraulic fracturing has endangered or will endanger underground drinking water sources; and

''(iii) there are any precautionary actions that may reduce or eliminate any such endangerment.

''(D) STUDY OF HYDRAULIC FRACTURING IN A PARTICULAR TYPE OF GEOLOGIC FORMATION.—The Administrator may also complete a separate study on the known and potential effects on underground drinking water sources of hydraulic fracturing in a particular type of geologic formation:

''(i) If such a study is undertaken, the Administrator shall follow the procedures for study preparation and independent scientific review set forth in subparagraphs (1) (B) and (C) and (2) of this subsection. The Administrator may complete this separate study prior to the completion of the broader study of hydraulic fracturing required pursuant to subparagraph (A) of this subsection.

''(ii) At the conclusion of independent scientific review for any separate study, the Administrator shall determine, pursuant to paragraph (3), whether regulation of hydraulic fracturing in the particular type of geologic formation addressed in the separate study is necessary under this part to ensure that underground sources of drinking water will not be endangered on a nationwide basis, or within a specific region, State or portions of a State. Subparagraph (4) of this subsection shall apply to any such determination by the Administrator.

''(iii) If the Administrator completes a separate study, the Administrator may use the information gathered in the course of such a study in undertaking her broad study to the extent appropriate. The broader study need not include a reexamination of the conclusions reached by the Administrator in any separate study.

''(2) INDEPENDENT SCIENTIFIC REVIEW.—

''(A) IN GENERAL.—Prior to the time the study under paragraph (1) is completed, the Administrator shall enter into an appropriate agreement with the National Academy of Sciences to have the Academy review the conclusions of the study.

''(B) REPORT.—Not later than 11 months after entering into an appropriate agreement with the Administrator, the National Academy of Sciences shall report to the Administrator, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Environment and Public Works of the Senate, on the—

''(i) findings related to the study conducted by the Administrator under paragraph (1);

''(ii) the scientific and technical basis for such findings; and

''(iii) recommendations, if any, for modifying the findings of the study.

''(3) REGULATORY DETERMINATION.—

''(A) IN GENERAL.—Not later than 6 months after receiving the National Academy of Sciences report under paragraph (2), the Administrator shall determine, after informal public hearings and public notice and opportunity for comment, and based on information developed or accumulated in connection with the study required under paragraph (1) and the National Academy of Sciences report under paragraph (2), either—

''(i) that regulation of hydraulic fracturing under this part is necessary to ensure that underground sources of drinking water will not be endangered on a nationwide basis, or within a specific region, State or portions of a State; or

''(ii) that regulation described under clause (i) is unnecessary.

''(B) PUBLICATION OF DETERMINATION.—The Administrator shall publish the determination in the Federal Register, accompanied by an explanation and the reasons for it.

''(4) PROMULGATION OF REGULATIONS.—

''(A) REGULATION NECESSARY.—If the Administrator determines under paragraph (3) that regulation by hydraulic fracturing under this part is necessary to ensure that hydraulic fracturing does not endanger underground drinking water sources on a nationwide basis, or within a specific region, State or portions of a State, the Administrator shall, within 6 months after the issuance of that determination, and after public notice and opportunity for comment, promulgate regulations under section 1421 (42 U.S.C. 300h) to ensure that hydraulic fracturing will not endanger such underground sources of drinking water. However, for purposes of the Administrator's approval or disapproval under section 1422 of any State underground injection control program for regulating hydraulic fracturing, a State at any time may make the alternative demonstration provided for in section 1425 of this title.

''(B) REGULATION UNNECESSARY.—The Administrator shall not regulate or require States to regulate hydraulic fracturing under this part unless the Administrator determines under paragraph (3) that such regulation is necessary. This provision shall not apply to any State which has a program for the regulation of hydraulic fracturing that was approved by the Administrator under this part prior to the effective date of this subsection.

''(C) EXISTING REGULATIONS.—A determination by the Administrator under paragraph (3) that regulation is unnecessary will relieve all States (including those with existing approved programs for the regulation of hydraulic fracturing) from any further obligation to regulate hydraulic fracturing as an underground injection under this part.

''(5) DEFINITION OF HYDRAULIC FRACTURING.—For purposes of this subsection, the term 'hydraulic fracturing' means the process of creating a fracture in a reservoir rock, and injecting fluids and propping agents, for the purposes of reservoir stimulation related to oil and gas production activities.

''(6) SAVINGS.—Nothing in this subsection shall in any way limit the authorities of the Administrator under section 1431 (42 U.S.C. 300i).''.

SEC. 611. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator of the Environmental Protection Agency $100,000 for fiscal year 2003, to remain available until expended, for a grant to the State of Alabama to assist in the implementation of its regulatory program under section 1425 of the Safe Drinking Water Act.

SEC. 612. PRESERVATION OF OIL AND GAS RESOURCE DATA.

The Secretary of the Interior, through the United States Geological Survey, may enter into appropriate arrangements with State agencies that conduct geological survey activities to collect, archive, and provide public access to data and study results regarding oil and natural gas resources. The Secretary may accept private contributions of property and services for purposes of this section.

SEC 613. RESOLUTION OF FEDERAL RESOURCE DEVELOPMENT CONFLICTS IN THE POWDER RIVER BASIN.

The Secretary of the Interior shall undertake a review of existing authorities to resolve conflicts between the development of Federal coal and the development of Federal and non-Federal coalbed methane in the Powder River Basin in Wyoming and Montana. Not later than 90 days from enactment of this Act, the Secretary shall report to Congress on her plan to resolve these conflicts.

TITLE VII—NATURAL GAS PIPELINES

Subtitle A—Alaska Natural Gas Pipeline

SEC. 701. SHORT TITLE.

This subtitle may be cited as the ''Alaska Natural Gas Pipeline Act of 2003''.

SEC. 702. FINDINGS.

The Congress finds that:

(1) Construction of a natural gas pipeline system from the Alaskan North Slope to United States markets is in the national interest and will enhance national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(2) The Commission issued a conditional certificate of public convenience and necessity for the Alaska Natural Gas Transportation System, which remains in effect.

SEC. 703. PURPOSES.

The purposes of this subtitle are—

(1) to provide a statutory framework for the expedited approval, construction, and initial operation of an Alaska natural gas transportation project, as an alternative to the framework provided in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719–719o), which remains in effect;

(2) to establish a process for providing access to such transportation project in order to promote competition in the exploration, development and production of Alaska natural gas;

(3) to clarify Federal authorities under the Alaska Natural Gas Transportation Act; and

(4) to authorize Federal financial assistance to an Alaska natural gas transportation project as provided in this subtitle.

SEC. 704. ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(a) AUTHORITY OF THE COMMISSION.—Notwithstanding the provisions of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719–719o), the Commission may, pursuant to section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska Natural Gas Transportation System.

(b) ISSUANCE OF CERTIFICATE.—(1) The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) In considering an application under this section, the Commission shall presume that—

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

(B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through such project to markets in the contiguous United States.

(c) EXPEDITED APPROVAL PROCESS.—The Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section not more than 60 days after the issuance of the final environmental impact statement for that project pursuant to section 705.

(d) PROHIBITION ON CERTAIN PIPELINE ROUTE.—No license, permit, lease, right-of-way, authorization or other approval required under Federal law for the construction of any pipeline to transport natural gas from lands within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that traverses—

(1) the submerged lands (as defined by the Submerged Lands Act) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees North latitude.

(e) OPEN SEASON.—Except where an expansion is ordered pursuant to section 706, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations governing the conduct of open seasons for such project. Such procedures shall include the criteria for and timing of any open seasons, be consistent with the purposes set forth in section 703(2) and, for any open season for capacity beyond the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thompson units. The Commission shall issue such regulations no later than 120 days after the enactment of this subtitle.

(f) PROJECTS IN THE CONTIGUOUS UNITED STATES.—Applications for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made pursuant to the Natural Gas Act. To the extent such pipeline facilities include the expansion of any facility constructed pursuant to the Alaska Natural Gas Transportation Act of 1976, the provisions of that Act shall continue to apply.

(g) STUDY OF IN-STATE NEEDS.—The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that it has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) ALASKA ROYALTY GAS.—The Commission, upon the request of the State of Alaska and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project for the State of Alaska or its designee for the transportation of the State's royalty gas for local consumption needs within the State: Provided, That the rates of existing shippers of subscribed capacity on such project shall not be increased as a result of such access.

(i) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 705. ENVIRONMENTAL REVIEWS.

(a) COMPLIANCE WITH NEPA.—The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 704 shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) DESIGNATION OF LEAD AGENCY.—The Commission shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969, and shall be responsible for preparing the statement required by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c)) with respect to an Alaska natural gas transportation project under section 704. The Commission shall prepare a single environmental statement under this section, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the project.

(c) OTHER AGENCIES.—All Federal agencies considering aspects of the construction and operation of an Alaska natural gas transportation project under section 704 shall cooperate with the Commission, and shall comply with deadlines established by the Commission in the preparation of the statement under this section. The statement prepared under this section shall be used by all such agencies to satisfy their responsibilities under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to such project.

(d) EXPEDITED PROCESS.—The Commission shall issue a draft statement under this section not later than 12 months after the Commission determines the application to be complete and shall issue the final statement not later than 6 months after the Commission issues the draft statement, unless the Commission for good cause finds that additional time is needed.

SEC. 706. PIPELINE EXPANSION.

(a) AUTHORITY.—With respect to any Alaska natural gas transportation project, upon the request of one or more persons and after giving notice and an opportunity for a hearing, the Commission may order the expansion of such project if it determines that such expansion is required by the present and future public convenience and necessity.

(b) REQUIREMENTS.—Before ordering an expansion the Commission shall—

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates as established do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that the proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the then-effective tariff of the Alaska natural gas transportation project;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) REQUIREMENT FOR A FIRM TRANSPORTATION AGREEMENT.—Any order of the Commission issued pursuant to this section shall be null and void unless the person or persons requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within a reasonable period of time as specified in such order.

(d) LIMITATION.—Nothing in this section shall be construed to expand or otherwise affect any authorities of the Commission with respect to any natural gas pipeline located outside the State of Alaska.

(e) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 707. FEDERAL COORDINATOR.

(a) ESTABLISHMENT.—There is established as an independent establishment in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) THE FEDERAL COORDINATOR.—The Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall—

(1) be appointed by the President, by and with the advice of the Senate,

(2) hold office at the pleasure of the President, and

(3) be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) DUTIES.—The Federal Coordinator shall be responsible for—

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

(2) ensuring the compliance of Federal agencies with the provisions of this subtitle.

(d) REVIEWS AND ACTIONS OF OTHER FEDERAL AGENCIES.—(1) All reviews conducted and actions taken by any Federal officer or agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines set forth in this subtitle.

(2) No Federal officer or agency shall have the authority to include terms and conditions that are permitted, but not required, by law on any certificate, right-of-way, permit, lease or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the terms and conditions would prevent or impair in any significant respect the expeditious construction and operation of the project.

(3) Unless required by law, no Federal officer or agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that such action would prevent or impair in any significant respect the expeditious construction and operation of the project.

(e) STATE COORDINATION.—The Federal Coordinator shall enter into a Joint Surveillance and Monitoring Agreement, approved by the President and the Governor of Alaska, with the State of Alaska similar to that in effect during construction of the Trans-Alaska Oil Pipeline to monitor the construction of the Alaska natural gas transportation project. The Federal Government shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses Federal lands and private lands, and the State government

shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses State lands.

SEC. 708. JUDICIAL REVIEW.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this subtitle;

(2) the constitutionality of any provision of this subtitle, or any decision made or action taken thereunder; or

(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 with respect to any action under this subtitle.

(b) DEADLINE FOR FILING CLAIM.—Claims arising under this subtitle may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) EXPEDITED CONSIDERATION.—The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) of this section for expedited consideration, taking into account the national interest as described in section 702 of this subtitle.

(d) AMENDMENT TO ANGTA.—Section 10(c) of the Alaska Gas Transportation Act of 1976 (15 U.S.C. 719h) is amended by adding the following paragraph:

''(2) EXPEDITED CONSIDERATION.—The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) of this section for expedited consideration, taking into account the national interest described in section 2 of this Act.''.

SEC. 709. STATE JURISDICTION OVER IN-STATE DELIVERY OF NATURAL GAS.

(a) LOCAL DISTRIBUTION.—Any facility receiving natural gas from the Alaska natural gas transportation project for delivery to consumers within the State of Alaska shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717), and therefore not subject to the jurisdiction of the Federal Energy Regulatory Commission.

(b) ADDITIONAL PIPELINES.—Nothing in this subtitle, except as provided in subsection 704(d), shall preclude or affect a future gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State of Alaska for consumption within or distribution outside the State of Alaska.

(c) RATE COORDINATION.—Pursuant to the Natural Gas Act, the Commission shall establish rates for the transportation of natural gas on the Alaska natural gas transportation project. In exercising such authority, the Commission, pursuant to Section 17(b) of the Natural Gas Act (15 U.S.C. 717p), shall confer with the State of Alaska regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State of Alaska.

SEC. 710. LOAN GUARANTEE.

(a) AUTHORITY.—The Secretary of Energy may guarantee not more than 80 percent of the principal of any loan made to the holder of a certificate of public convenience and necessity issued under section 704(b) of this Act or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) for the purpose of constructing an Alaska natural gas transportation project.

(b) CONDITIONS.—(1) The Secretary of Energy may not guarantee a loan under this section unless the guarantee has filed an application for a certificate of public convenience and necessity under section 704(b) of this Act or for an amended certificate under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) with the Commission not later than 18 months after the date of enactment of this subtitle.

(2) A loan guaranteed under this section shall be made by a financial institution subject to the examination of the Secretary.

(3) Loan requirements, including term, maximum size, collateral requirements and other features shall be determined by the Secretary.

(c) LIMITATION ON AMOUNT.—Commitments to guarantee loans may be made by the Secretary of Energy only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $10,000,000,000.

(d) REGULATIONS.—The Secretary of Energy may issue regulations to carry out the provisions of this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to cover the cost of loan guarantees, as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)).

SEC. 711. STUDY OF ALTERNATIVE MEANS OF CONSTRUCTION.

(a) REQUIREMENT OF STUDY.—If no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission within 18 months after the date of enactment of this title, the Secretary of Energy shall conduct a study of alternative approaches to the construction and operation of the project.

(b) SCOPE OF STUDY.—The study shall consider the feasibility of establishing a Government corporation to construct an Alaska natural gas transportation project, and alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the project.

(c) CONSULTATION.—In conducting the study, the Secretary of Energy shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Commanding General of the Corps of Engineers).

(d) REPORT.—If the Secretary of Energy is required to conduct a study under subsection (a), he shall submit a report containing the results of the study, his recommendations, and any proposals for legislation to implement his recommendations to the Congress within 6 months after the expiration of the Secretary of Energy's authority to guarantee a loan under section 710.

SEC. 712. CLARIFICATION OF ANGTA STATUS AND AUTHORITIES.

(a) SAVINGS CLAUSE.—Nothing in this subtitle affects any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) or any Presidential findings or waivers issued in accordance with that Act.

(b) CLARIFICATION OF AUTHORITY TO AMEND TERMS AND CONDITIONS TO MEET CURRENT PROJECT REQUIREMENTS.—Any Federal officer or agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), so long as such action does not compel a change in the basic nature and general route of the Alaska Natural Gas Transportation System as designated and described in section 2 of the President's Decision, or would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(c) UPDATED ENVIRONMENTAL REVIEWS.—The Secretary of Energy shall require the sponsor of the Alaska Natural Gas Transportation System to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's Decision.

SEC. 713. DEFINITIONS.

For purposes of this subtitle:

(1) The term ''Alaska natural gas'' means natural gas derived from the area of the State of Alaska lying north of 64 degrees North latitude.

(2) The term ''Alaska natural gas transportation project'' means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under either—

(A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719–719o); or

(B) section 704 of this subtitle.

(3) The term ''Alaska Natural Gas Transportation System'' means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 and designated and described in section 2 of the President's Decision.

(4) The term ''Commission'' means the Federal Energy Regulatory Commission.

(5) The term ''President's Decision'' means the Decision and Report to Congress on the Alaska Natural Gas Transportation system issued by the President on September 22, 1977 pursuant to section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719c) and approved by Public Law 95–158.

SEC. 714. SENSE OF THE SENATE.

It is the sense of the Senate that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, the Senate urges the sponsors of the pipeline project to make every effort to use steel that is manufactured or produced in North America and to negotiate a project labor agreement to expedite construction of the pipeline.

SEC. 715. ALASKAN PIPELINE CONSTRUCTION TRAINING PROGRAM.

(a) Within six months after enactment of this Act, the Secretary of Labor (in this section referred to as the ''Secretary'') shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives setting forth a program to train Alaska residents in the skills and crafts required in the design, construction, and operation of an Alaska gas pipeline system and that will enhance employment and contracting opportunities for Alaskan residents. The report shall also describe any laws, rules, regulations and policies which act as a deterrent to hiring Alaskan residents or contracting with Alaskan residents to perform work on Alaska gas pipelines, together with any recommendations for change. For purposes of this subsection, Alaskan residents shall be defined as those individuals eligible to vote within the State of Alaska on the date of enactment of this Act.

(b) Within 1 year of the date the report is transmitted to Congress, the Secretary shall establish within the State of Alaska, at such locations as are appropriate, one or more training centers for the express purpose of training Alaskan residents in the skills and crafts necessary in the design, construction and operation of gas pipelines in Alaska. Each such training center shall also train Alaskan residents in the skills required to write, offer, and monitor contracts in support of the design, construction, and operation of Alaska gas pipelines.

(c) In implementing the report and program described in this subsection, the Secretary shall consult with the Alaskan Governor.

(d) There are authorized to be appropriated to the Secretary such sums as may be necessary, but not to exceed $20,000,000 for the purposes of this subsection.

Subtitle B—Operating Pipelines

SEC. 721. ENVIRONMENTAL REVIEW AND PERMITTING OF NATURAL GAS PIPELINE PROJECTS.

(a) INTERAGENCY REVIEW.—The Chairman of the Council on Environmental Quality, in coordination with the Federal Energy Regulatory Commission, shall establish an interagency task force to develop an interagency memorandum of understanding to expedite the environmental review and permitting of natural gas pipeline projects.

(b) MEMBERSHIP OF INTERAGENCY TASK FORCE.—The task force shall consist of—

(1) the Chairman of the Council on Environmental Quality, who shall serve as the Chairman of the interagency task force,

(2) the Chairman of the Federal Energy Regulatory Commission,

(3) the Director of the Bureau of Land Management,

(4) the Director of the United States Fish and Wildlife Service,

(5) the Commanding General, United States Army Corps of Engineers,

(6) the Chief of the Forest Service,

(7) the Administrator of the Environmental Protection Agency,

(8) the Chairman of the Advisory Council on Historic Preservation, and

(9) the heads of such other agencies as the Chairman of the Council on Environmental Quality and the Chairman of the Federal Energy Regulatory Commission deem appropriate.

(c) MEMORANDUM OF UNDERSTANDING.—The agencies represented by the members of the interagency task force shall enter into the memorandum of understanding not later than 1 year after the date of the enactment of this section.

Subtitle C—Pipeline Safety

PART I—SHORT TITLE; AMENDMENT OF TITLE 49

SEC. 741. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE.

(a) SHORT TITLE.—This subtitle may be cited as the ''Pipeline Safety Improvement Act of 2003''.

(b) AMENDMENT OF TITLE 49, UNITED STATES CODE.—Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

PART II—PIPELINE SAFETY IMPROVEMENT ACT OF 2003

SEC. 761. IMPLEMENTATION OF INSPECTOR GENERAL RECOMMENDATIONS.

(a) IN GENERAL.—Except as otherwise required by this subtitle, the Secretary shall implement the safety improvement recommendations provided for in the Department of Transportation Inspector General's Report (RT–2000–069).

(b) REPORTS BY THE SECRETARY.—Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter until each of the recommendations referred to in subsection (a) has been implemented, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the specific actions taken to implement such recommendations.

(c) REPORTS BY THE INSPECTOR GENERAL.—The Inspector General shall periodically transmit to the committees referred to in subsection (b) a report assessing the Secretary's progress in implementing the recommendations referred to in subsection (a) and identifying options for the Secretary to consider in accelerating recommendation implementation.

SEC. 762. NTSB SAFETY RECOMMENDATIONS.

(a) IN GENERAL.—The Secretary of Transportation, the Administrator of Research and Special Program Administration, and the Director of the Office of Pipeline Safety shall fully comply with section 1135 of title 49, United States Code, to ensure timely responsiveness to National Transportation Safety Board recommendations about pipeline safety.

(b) PUBLIC AVAILABILITY.—The Secretary, Administrator, or Director, respectively, shall make a copy of each recommendation on pipeline safety and response, as described in sections 1135 (a) and (b) of title 49, United States Code, available to the public at reasonable cost.

(c) REPORTS TO CONGRESS.—The Secretary, Administrator, or Director, respectively, shall submit to the Congress by January 1 of each year a report containing each recommendation on pipeline safety made by the Board during the prior year and a copy of the response to each such recommendation.

SEC. 763. QUALIFICATIONS OF PIPELINE PERSONNEL.

(a) QUALIFICATION PLAN.—Each pipeline operator shall make available to the Secretary of Transportation, or, in the case of an intrastate pipeline facility operator, the appropriate State regulatory agency, a plan that is designed to enhance the qualifications of pipeline personnel and to reduce the likelihood of accidents and injuries. The plan shall be made available not more than 6 months after the date of enactment of this Act, and the operator shall revise or update the plan as appropriate.

(b) REQUIREMENTS.—The enhanced qualification plan shall include, at a minimum, criteria to demonstrate the ability of an individual to safely and properly perform tasks identified under section 60102 of title 49, United States Code. The plan shall also provide for training and periodic reexamination of pipeline personnel qualifications and provide for requalification as appropriate. The Secretary, or, in the case of an intrastate pipeline facility operator, the appropriate State regulatory agency, may review and certify the plans to determine if they are sufficient to provide a safe operating environment and shall periodically review the plans to ensure the continuation of a safe operation. The Secretary may establish minimum standards for pipeline personnel training and evaluation, which may include written examination, oral examination, work performance history review, observation during performance on the job, on the job training, simulations, or other forms of assessment.

(c) REPORT TO CONGRESS.—

(1) IN GENERAL.—The Secretary shall submit a report to the Congress evaluating the effectiveness of operator qualification and training efforts, including—

(A) actions taken by inspectors;

(B) recommendations made by inspectors for changes to operator qualification and training programs; and

(C) industry and employee organization responses to those actions and recommendations.

(2) CRITERIA.—The Secretary may establish criteria for use in evaluating and reporting on operator qualification and training for purposes of this subsection.

(3) DUE DATE.—The Secretary shall submit the report required by paragraph (1) to the Congress 3 years after the date of enactment of this Act.

SEC. 764. PIPELINE INTEGRITY INSPECTION PROGRAM.

Section 60109 is amended by adding at the end the following:

''(c) INTEGRITY MANAGEMENT.—

''(1) GENERAL REQUIREMENT.—The Secretary shall promulgate regulations requiring operators of hazardous liquid pipelines and natural gas transmission pipelines to evaluate the risks to the operator's pipeline facilities in areas identified pursuant to subsection (a)(1), and to adopt and implement a program for integrity management that reduces the risk of an incident in those areas. The regulations shall be issued no later than 1 year after the Secretary has issued standards pursuant to subsections (a) and (b) of this section or by December 31, 2003, whichever is sooner.

''(2) STANDARDS FOR PROGRAM.—In promulgating regulations under this section, the Secretary shall require an operator's integrity management plan to be based on risk analysis and each plan shall include, at a minimum—

''(A) periodic assessment of the integrity of the pipeline through methods including internal inspection, pressure testing, direct assessment, or other effective methods. The assessment period shall be no less than every 5 years unless the Department of Transportation Inspector General, after consultation with the Secretary determines there is not a sufficient capability or it is deemed unnecessary because of more technically appropriate monitoring or creates undue interruption of necessary supply to fulfill the requirements under this paragraph;

''(B) clearly defined criteria for evaluating the results of the periodic assessment methods carried out under subparagraph (A) and procedures to ensure identified problems are corrected in a timely manner; and

''(C) measures, as appropriate, that prevent and mitigate unintended releases, such as leak detection, integrity evaluation, restrictive flow devices, or other measures.

''(3) CRITERIA FOR PROGRAM STANDARDS.—In deciding how frequently the integrity assessment methods carried out under paragraph (2)(A) must be conducted, an operator shall take into account the potential for new defects developing or previously identified structural defects caused by construction or installation, the operational characteristics of the pipeline, and leak history. In addition, the Secretary may establish a minimum testing requirement for operators of pipelines to conduct internal inspections.

''(4) STATE ROLE.—A State authority that has an agreement in effect with the Secretary under section 60106 is authorized to review and assess an operator's risk analyses and integrity management plans required under this section for interstate pipelines located in that State. The reviewing State authority shall provide the Secretary with a written assessment of the plans, make recommendations, as appropriate, to address safety concerns not adequately addressed in the operator's plans, and submit documentation explaining the State-proposed plan revisions. The Secretary shall carefully consider the State's proposals and work in consultation with the States and operators to address safety concerns.

''(5) MONITORING IMPLEMENTATION.—The Secretary of Transportation shall review the risk analysis and program for integrity management required under this section and provide for continued monitoring of such plans. Not later than 2 years after the implementation of integrity management plans under this section, the Secretary shall complete an assessment and evaluation of the effects on safety and the environment of extending all of the requirements mandated by the regulations described in paragraph (1) to additional areas. The Secretary shall submit the assessment and evaluation to Congress along with any recommendations to improve and expand the utilization of integrity management plans.

''(6) OPPORTUNITY FOR LOCAL INPUT ON INTEGRITY MANAGEMENT.—Within 18 months after the date of enactment of the Pipeline Safety Improvement Act of 2003, the Secretary shall, by regulation, establish a process for raising and addressing local safety concerns about pipeline integrity and the operator's pipeline integrity plan. The process shall include—

''(A) a requirement that an operator of a hazardous liquid or natural gas transmission pipeline facility provide information about the risk analysis and integrity management plan required under this section to local officials in a State in which the facility is located;

''(B) a description of the local officials required to be informed, the information that is to

be provided to them and the manner, which may include traditional or electronic means, in which it is provided;

''(C) the means for receiving input from the local officials that may include a public forum sponsored by the Secretary or by the State, or the submission of written comments through traditional or electronic means;

''(D) the extent to which an operator of a pipeline facility must participate in a public forum sponsored by the Secretary or in another means for receiving input from the local officials or in the evaluation of that input; and

''(E) the manner in which the Secretary will notify the local officials about how their concerns are being addressed.''.

SEC. 765. ENFORCEMENT.

(a) IN GENERAL.—Section 60112 is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL AUTHORITY.—After notice and an opportunity for a hearing, the Secretary of Transportation may decide a pipeline facility is hazardous if the Secretary decides that—

''(1) operation of the facility is or would be hazardous to life, property, or the environment; or

''(2) the facility is, or would be, constructed or operated, or a component of the facility is, or would be, constructed or operated with equipment, material, or a technique that the Secretary decides is hazardous to life, property, or the environment.''; and

(2) by striking ''is hazardous,'' in subsection (d) and inserting ''is, or would be, hazardous,''.

SEC. 766. PUBLIC EDUCATION, EMERGENCY PREPAREDNESS, AND COMMUNITY RIGHT-TO-KNOW.

(a) Section 60116 is amended to read as follows:

''§ 60116. Public education, emergency preparedness, and community right-to-know

''(a) PUBLIC EDUCATION PROGRAMS.—(1) Each owner or operator of a gas or hazardous liquid pipeline facility shall carry out a continuing program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.

''(2) Within 12 months after the date of enactment of the Pipeline Safety Improvement Act of 2003, each owner or operator of a gas or hazardous liquid pipeline facility shall review its existing public education program for effectiveness and modify the program as necessary. The completed program shall include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. The completed program shall be submitted to the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency and shall be periodically reviewed by the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

''(3) The Secretary may issue standards prescribing the elements of an effective public education program. The Secretary may also develop material for use in the program.

''(b) EMERGENCY PREPAREDNESS.—

''(1) OPERATOR LIAISON.—Within 12 months after the date of enactment of the Pipeline Safety Improvement Act of 2003, an operator of a gas transmission or hazardous liquid pipeline facility shall initiate and maintain liaison with the State emergency response commissions, and local emergency planning committees in the areas of pipeline right-of-way, established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001) in each State in which it operates.

''(2) INFORMATION.—An operator shall, upon request, make available to the State emergency response commissions and local emergency planning committees, and shall make available to the Office of Pipeline Safety in a standardized form for the purpose of providing the information to the public, the information described in section 60102(d), the operator's program for integrity management, and information about implementation of that program. The information about the facility shall also include, at a minimum—

''(A) the business name, address, telephone number of the operator, including a 24-hour emergency contact number;

''(B) a description of the facility, including pipe diameter, the product or products carried, and the operating pressure;

''(C) with respect to transmission pipeline facilities, maps showing the location of the facility and, when available, any high consequence areas which the pipeline facility traverses or adjoins and abuts;

''(D) a summary description of the integrity measures the operator uses to assure safety and protection for the environment; and

''(E) a point of contact to respond to questions from emergency response representative.

''(3) SMALLER COMMUNITIES.—In a community without a local emergency planning committee, the operator shall maintain liaison with the local fire, police, and other emergency response agencies.

''(4) PUBLIC ACCESS.—The Secretary shall prescribe requirements for public access, as appropriate, to this information, including a requirement that the information be made available to the public by widely accessible computerized database.

''(c) COMMUNITY RIGHT-TO-KNOW.—Not later than 12 months after the date of enactment of the Pipeline Safety Improvement Act of 2003, and annually thereafter, the owner or operator of each gas transmission or hazardous liquid pipeline facility shall provide to the governing body of each municipality in which the pipeline facility is located, a map identifying the location of such facility. The map may be provided in electronic form. The Secretary may provide technical assistance to the pipeline industry on developing public safety and public education program content and best practices for program delivery, and on evaluating the effectiveness of the programs. The Secretary may also provide technical assistance to State and local officials in applying practices developed in these programs to their activities to promote pipeline safety.

''(d) PUBLIC AVAILABILITY OF REPORTS.—The Secretary shall—

''(1) make available to the public—

''(A) a safety-related condition report filed by an operator under section 60102(h);

''(B) a report of a pipeline incident filed by an operator;

''(C) the results of any inspection by the Office of Pipeline Safety or a State regulatory official; and

''(D) a description of any corrective action taken in response to a safety-related condition reported under subparagraph (A), (B), or (C); and

''(2) prescribe requirements for public access, as appropriate, to integrity management program information prepared under this chapter, including requirements that will ensure data accessibility to the greatest extent feasible.''.

(b) SAFETY CONDITION REPORTS.—Section 60102(h)(2) is amended by striking ''authorities.'' and inserting ''officials, including the local emergency responders.''.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 601 is amended by striking the item relating to section 60116 and inserting the following:

''60116. Public education, emergency preparedness, community right-to-know.''.

SEC. 767. PENALTIES.

(a) CIVIL PENALTIES.—Section 60122 is amended—

(1) by striking ''$25,000'' in subsection (a)(1) and inserting ''$500,000'';

(2) by striking ''$500,000'' in subsection (a)(1) and inserting ''$1,000,000'';

(3) by adding at the end of subsection (a)(1) the following: ''The preceding sentence does not apply to judicial enforcement action under section 60120 or 60121.''; and

(4) by striking subsection (b) and inserting the following:

''(b) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section—

''(1) the Secretary shall consider—

''(A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment;

''(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, any effect on ability to continue doing business; and

''(C) good faith in attempting to comply; and

''(2) the Secretary may consider—

''(A) the economic benefit gained from the violation without any discount because of subsequent damages; and

''(B) other matters that justice requires.''.

(b) EXCAVATOR DAMAGE.—Section 60123(d) is amended—

(1) by striking ''knowingly and willfully'';

(2) by inserting ''knowingly and willfully'' before ''engages'' in paragraph (1); and

(3) striking paragraph (2)(B) and inserting the following:

''(B) a pipeline facility, is aware of damage, and does not report the damage promptly to the operator of the pipeline facility and to other appropriate authorities; or''.

(c) CIVIL ACTIONS.—Section 60120(a)(1) is amended to read as follows:

''(1) On the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter, including section 60112 of this chapter, or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same factors as prescribed for the Secretary in an administrative case under section 60122.''.

SEC. 768. STATE OVERSIGHT ROLE.

(a) STATE AGREEMENTS WITH CERTIFICATION.—Section 60106 is amended—

(1) by striking ''GENERAL AUTHORITY.—'' in subsection (a) and inserting ''AGREEMENTS WITHOUT CERTIFICATION.—'';

(2) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e); and

(3) by inserting after subsection (a) the following:

''(b) AGREEMENTS WITH CERTIFICATION.—

''(1) IN GENERAL.—If the Secretary accepts a certification under section 60105 of this title and makes the determination required under this subsection, the Secretary may make an agreement with a State authority authorizing it to participate in the oversight of interstate pipeline transportation. Each such agreement shall include a plan for the State authority to participate in special investigations involving incidents or new construction and allow the State authority to participate in other activities overseeing interstate pipeline transportation or to assume additional inspection or investigatory duties. Nothing in this section modifies section 60104(c) or authorizes the Secretary to delegate the enforcement of safety standards prescribed under this chapter to a State authority.

''(2) DETERMINATIONS REQUIRED.—The Secretary may not enter into an agreement under this subsection, unless the Secretary determines that—

''(A) the agreement allowing participation of the State authority is consistent with the Secretary's program for inspection and consistent

with the safety policies and provisions provided under this chapter;

''(B) the interstate participation agreement would not adversely affect the oversight responsibilities of intrastate pipeline transportation by the State authority;

''(C) the State is carrying out a program demonstrated to promote preparedness and risk prevention activities that enable communities to live safely with pipelines;

''(D) the State meets the minimum standards for State one-call notification set forth in chapter 61; and

''(E) the actions planned under the agreement would not impede interstate commerce or jeopardize public safety.

''(3) EXISTING AGREEMENTS.—If requested by the State authority, the Secretary shall authorize a State authority which had an interstate agreement in effect after January 1999, to oversee interstate pipeline transportation pursuant to the terms of that agreement until the Secretary determines that the State meets the requirements of paragraph (2) and executes a new agreement, or until December 31, 2003, whichever is sooner. Nothing in this paragraph shall prevent the Secretary, after affording the State notice, hearing, and an opportunity to correct any alleged deficiencies, from terminating an agreement that was in effect before enactment of the Pipeline Safety Improvement Act of 2003 if—

''(A) the State authority fails to comply with the terms of the agreement;

''(B) implementation of the agreement has resulted in a gap in the oversight responsibilities of intrastate pipeline transportation by the State authority; or

''(C) continued participation by the State authority in the oversight of interstate pipeline transportation has had an adverse impact on pipeline safety.''.

(b) ENDING AGREEMENTS.—Subsection (e) of section 60106, as redesignated by subsection (a), is amended to read as follows:

''(e) ENDING AGREEMENTS.—

''(1) PERMISSIVE TERMINATION.—The Secretary may end an agreement under this section when the Secretary finds that the State authority has not complied with any provision of the agreement.

''(2) MANDATORY TERMINATION OF AGREEMENT.—The Secretary shall end an agreement for the oversight of interstate pipeline transportation if the Secretary finds that—

''(A) implementation of such agreement has resulted in a gap in the oversight responsibilities of intrastate pipeline transportation by the State authority;

''(B) the State actions under the agreement have failed to meet the requirements under subsection (b); or

''(C) continued participation by the State authority in the oversight of interstate pipeline transportation would not promote pipeline safety.

''(3) PROCEDURAL REQUIREMENTS.—The Secretary shall give the notice and an opportunity for a hearing to a State authority before ending an agreement under this section. The Secretary may provide a State an opportunity to correct any deficiencies before ending an agreement. The finding and decision to end the agreement shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication unless the Secretary finds that continuation of an agreement poses an imminent hazard.''.

SEC. 769. IMPROVED DATA AND DATA AVAILABILITY.

(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Secretary shall develop and implement a comprehensive plan for the collection and use of gas and hazardous liquid pipeline data to revise the causal categories on the incident report forms to eliminate overlapping and confusing categories and include subcategories. The plan shall include components to provide the capability to perform sound incident trend analysis and evaluations of pipeline operator performance using normalized accident data.

(b) REPORT OF RELEASES EXCEEDING 5 GALLONS.—Section 60117(b) is amended—

(1) by inserting ''(1)'' before ''To'';

(2) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B);

(3) inserting before the last sentence the following:

''(2) A person owning or operating a hazardous liquid pipeline facility shall report to the Secretary each release to the environment greater than 5 gallons of the hazardous liquid or carbon dioxide transported. This section applies to releases from pipeline facilities regulated under this chapter. A report must include the location of the release, fatalities and personal injuries, type of product, amount of product release, cause or causes of the release, extent of damage to property and the environment, and the response undertaken to clean up the release.

''(3) During the course of an incident investigation, a person owning or operating a pipeline facility shall make records, reports, and information required under subsection (a) of this section or other reasonably described records, reports, and information relevant to the incident investigation, available to the Secretary within the time limits prescribed in a written request.''; and

(4) indenting the first word of the last sentence and inserting ''(4)'' before ''The Secretary'' in that sentence.

(c) PENALTY AUTHORITIES.—(1) Section 60122(a) is amended by striking ''60114(c)'' and inserting ''60117(b)(3)''.

(2) Section 60123(a) is amended by striking ''60114(c),'' and inserting ''60117(b)(3),''.

(d) ESTABLISHMENT OF NATIONAL DEPOSITORY.—Section 60117 is amended by adding at the end the following:

''(l) NATIONAL DEPOSITORY.—The Secretary shall establish a national depository of data on events and conditions, including spill histories and corrective actions for specific incidents, that can be used to evaluate the risk of, and to prevent, pipeline failures and releases. The Secretary shall administer the program through the Bureau of Transportation Statistics, in cooperation with the Research and Special Programs Administration, and shall make such information available for use by State and local planning and emergency response authorities and the public.''.

SEC. 770. RESEARCH AND DEVELOPMENT.

(a) INNOVATIVE TECHNOLOGY DEVELOPMENT.—

(1) IN GENERAL.—As part of the Department of Transportation's research and development program, the Secretary of Transportation shall direct research attention to the development of alternative technologies—

(A) to expand the capabilities of internal inspection devices to identify and accurately measure defects and anomalies;

(B) to inspect pipelines that cannot accommodate internal inspection devices available on the date of enactment;

(C) to develop innovative techniques measuring the structural integrity of pipelines;

(D) to improve the capability, reliability, and practicality of external leak detection devices; and

(E) to develop and improve alternative technologies to identify and monitor outside force damage to pipelines.

(2) COOPERATIVE.—The Secretary may participate in additional technological development through cooperative agreements with trade associations, academic institutions, or other qualified organizations.

(b) PIPELINE SAFETY AND RELIABILITY RESEARCH AND DEVELOPMENT.—

(1) IN GENERAL.—The Secretary of Transportation, in coordination with the Secretary of Energy, shall develop and implement an accelerated cooperative program of research and development to ensure the integrity of natural gas and hazardous liquid pipelines. This research and development program—

(A) shall include materials inspection techniques, risk assessment methodology, and information systems surety; and

(B) shall complement, and not replace, the research program of the Department of Energy addressing natural gas pipeline issues existing on the date of enactment of this Act.

(2) PURPOSE.—The purpose of the cooperative research program shall be to promote pipeline safety research and development to—

(A) ensure long-term safety, reliability and service life for existing pipelines;

(B) expand capabilities of internal inspection devices to identify and accurately measure defects and anomalies;

(C) develop inspection techniques for pipelines that cannot accommodate the internal inspection devices available on the date of enactment;

(D) develop innovative techniques to measure the structural integrity of pipelines to prevent pipeline failures;

(E) develop improved materials and coatings for use in pipelines;

(F) improve the capability, reliability, and practicality of external leak detection devices;

(G) identify underground environments that might lead to shortened service life;

(H) enhance safety in pipeline siting and land use;

(I) minimize the environmental impact of pipelines;

(J) demonstrate technologies that improve pipeline safety, reliability, and integrity;

(K) provide risk assessment tools for optimizing risk mitigation strategies; and

(L) provide highly secure information systems for controlling the operation of pipelines.

(3) AREAS.—In carrying out this subsection, the Secretary of Transportation, in coordination with the Secretary of Energy, shall consider research and development on natural gas, crude oil and petroleum product pipelines for—

(A) early crack, defect, and damage detection, including real-time damage monitoring;

(B) automated internal pipeline inspection sensor systems;

(C) land use guidance and set back management along pipeline rights-of-way for communities;

(D) internal corrosion control;

(E) corrosion-resistant coatings;

(F) improved cathodic protection;

(G) inspection techniques where internal inspection is not feasible, including measurement of structural integrity;

(H) external leak detection, including portable real-time video imaging technology, and the advancement of computerized control center leak detection systems utilizing real-time remote field data input;

(I) longer life, high strength, non-corrosive pipeline materials;

(J) assessing the remaining strength of existing pipes;

(K) risk and reliability analysis models, to be used to identify safety improvements that could be realized in the near term resulting from analysis of data obtained from a pipeline performance tracking initiative;

(L) identification, monitoring, and prevention of outside force damage, including satellite surveillance; and

(M) any other areas necessary to ensuring the public safety and protecting the environment.

(4) POINTS OF CONTACT.—

(A) IN GENERAL.—To coordinate and implement the research and development programs and activities authorized under this subsection—

(i) the Secretary of Transportation shall designate, as the point of contact for the Department of Transportation, an officer of the Department of Transportation who has been appointed by the President and confirmed by the Senate; and

(ii) the Secretary of Energy shall designate, as the point of contact for the Department of Energy, an officer of the Department of Energy who has been appointed by the President and confirmed by the Senate.

(B) DUTIES.—

(i) The point of contact for the Department of Transportation shall have the primary responsibility for coordinating and overseeing the implementation of the research, development, and demonstration program plan under paragraphs (5) and (6).

(ii) The points of contact shall jointly assist in arranging cooperative agreements for research, development and demonstration involving their respective Departments, national laboratories, universities, and industry research organizations.

(5) RESEARCH AND DEVELOPMENT PROGRAM PLAN.—Within 240 days after the date of enactment of this Act, the Secretary of Transportation, in coordination with the Secretary of Energy and the Pipeline Integrity Technical Advisory Committee, shall prepare and submit to the Congress a 5-year program plan to guide activities under this subsection. In preparing the program plan, the Secretary shall consult with appropriate representatives of the natural gas, crude oil, and petroleum product pipeline industries to select and prioritize appropriate project proposals. The Secretary may also seek the advice of utilities, manufacturers, institutions of higher learning, Federal agencies, the pipeline research institutions, national laboratories, State pipeline safety officials, environmental organizations, pipeline safety advocates, and professional and technical societies.

(6) IMPLEMENTATION.—The Secretary of Transportation shall have primary responsibility for ensuring the 5-year plan provided for in paragraph (5) is implemented as intended. In carrying out the research, development, and demonstration activities under this paragraph, the Secretary of Transportation and the Secretary of Energy may use, to the extent authorized under applicable provisions of law, contracts, cooperative agreements, cooperative research and development agreements under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), grants, joint ventures, other transactions, and any other form of agreement available to the Secretary consistent with the recommendations of the Advisory Committee.

(7) REPORTS TO CONGRESS.—The Secretary of Transportation shall report to the Congress annually as to the status and results to date of the implementation of the research and development program plan. The report shall include the activities of the Departments of Transportation and Energy, the national laboratories, universities, and any other research organizations, including industry research organizations.

SEC. 771. PIPELINE INTEGRITY TECHNICAL ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary of Transportation shall enter into appropriate arrangements with the National Academy of Sciences to establish and manage the Pipeline Integrity Technical Advisory Committee for the purpose of advising the Secretary of Transportation and the Secretary of Energy on the development and implementation of the 5-year research, development, and demonstration program plan under section 770(b)(5). The Advisory Committee shall have an ongoing role in evaluating the progress and results of the research, development, and demonstration carried out under that section.

(b) MEMBERSHIP.—The National Academy of Sciences shall appoint the members of the Pipeline Integrity Technical Advisory Committee after consultation with the Secretary of Transportation and the Secretary of Energy. Members appointed to the Advisory Committee should have the necessary qualifications to provide technical contributions to the purposes of the Advisory Committee.

SEC. 772. AUTHORIZATION OF APPROPRIATIONS.

(a) GAS AND HAZARDOUS LIQUIDS.—Section 60125(a) is amended to read as follows:

''(a) GAS AND HAZARDOUS LIQUID.—To carry out this chapter and other pipeline-related damage prevention activities of this title (except for section 60107), there are authorized to be appropriated to the Department of Transportation—$30,000,000 for each of the fiscal years 2003, 2004, and 2005 of which $23,000,000 is to be derived from user fees for fiscal years 2003, 2004, and 2005 collected under section 60301 of this title.''.

(b) GRANTS TO STATES.—Section 60125(c) is amended to read as follows:

''(c) STATE GRANTS.—Not more than the following amounts may be appropriated to the Secretary to carry out section 60107—$20,000,000 for the fiscal years 2003, 2004, and 2005 of which $18,000,000 is to be derived from user fees for fiscal years 2003, 2004, and 2005 collected under section 60301 of this title.''.

(c) OIL SPILLS.—Section 60125 is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), (g) and inserting after subsection (c) the following:

''(d) OIL SPILL LIABILITY TRUST FUND.—Of the amounts available in the Oil Spill Liability Trust Fund, $8,000,000 shall be transferred to the Secretary of Transportation, as provided in appropriation Acts, to carry out programs authorized in this title for each of fiscal years 2003, 2004, and 2005.''.

(d) PIPELINE INTEGRITY PROGRAM.—(1) There are authorized to be appropriated to the Secretary of Transportation for carrying out sections 770(b) and 771 of this subtitle $3,000,000, to be derived from user fees under section 60301 of title 49, United States Code, for each of the fiscal years 2003 through 2007.

(2) Of the amounts available in the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), $3,000,000 shall be transferred to the Secretary of Transportation, as provided in appropriation Acts, to carry out programs for detection, prevention and mitigation of oil spills under sections 770(b) and 771 of this subtitle for each of the fiscal years 2003 through 2007.

(3) There are authorized to be appropriated to the Secretary of Energy for carrying out sections 770(b) and 771 of this subtitle such sums as may be necessary for each of the fiscal years 2003 through 2007.

SEC. 773. OPERATOR ASSISTANCE IN INVESTIGATIONS.

(a) IN GENERAL.—If the Department of Transportation or the National Transportation Safety Board investigate an accident, the operator involved shall make available to the representative of the Department or the Board all records and information that in any way pertain to the accident (including integrity management plans and test results), and shall afford all reasonable assistance in the investigation of the accident.

(b) CORRECTIVE ACTION ORDERS.—Section 60112(d) is amended—

(1) by inserting ''(1)'' after ''CORRECTIVE ACTION ORDERS.—''; and

(2) by adding at the end the following:

''(2) If, in the case of a corrective action order issued following an accident, the Secretary determines that the actions of an employee carrying out an activity regulated under this chapter, including duties under section 60102(a), may have contributed substantially to the cause of the accident, the Secretary shall direct the operator to relieve the employee from performing those activities, reassign the employee, or place the employee on leave until the earlier of the date on which—

''(A) the Secretary determines, after notice and an opportunity for a hearing, that the employee's performance of duty in carrying out the activity did not contribute substantially to the cause of the accident; or

''(B) the Secretary determines the employee has been re-qualified or re-trained as provided for in section 763 of the Pipeline Safety Improvement Act of 2003 and can safely perform those activities.

''(3) Action taken by an operator under paragraph (2) shall be in accordance with the terms and conditions of any applicable collective bargaining agreement to the extent it is not inconsistent with the requirements of this section.''.

SEC. 774. PROTECTION OF EMPLOYEES PROVIDING PIPELINE SAFETY INFORMATION.

(a) IN GENERAL.—Chapter 601 is amended by adding at the end the following:

''§ 60129. Protection of employees providing pipeline safety information

''(a) DISCRIMINATION AGAINST PIPELINE EMPLOYEES.—No pipeline operator or contractor or subcontractor of a pipeline may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

''(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Research and Special Programs Administration or any other provision of Federal law relating to pipeline safety under this chapter or any other law of the United States;

''(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Administration or any other provision of Federal law relating to pipeline safety under this chapter or any other law of the United States;

''(3) testified or is about to testify in such a proceeding; or

''(4) assisted or participated or is about to assist or participate in such a proceeding.

''(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

''(1) FILING AND NOTIFICATION.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 90 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Research and Special Programs Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

''(2) INVESTIGATION; PRELIMINARY ORDER.—

''(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections

to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

''(B) REQUIREMENTS.—

''(i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

''(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

''(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

''(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

''(3) FINAL ORDER.—

''(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

''(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation to—

''(i) take affirmative action to abate the violation;

''(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

''(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

''(C) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee not exceeding $1,000.

''(4) REVIEW.—

''(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

''(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

''(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief, including, but not to be limited to, injunctive relief and compensatory damages.

''(6) ENFORCEMENT OF ORDER BY PARTIES.—

''(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

''(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award costs is appropriate.

''(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

''(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of a pipeline, contractor or subcontractor who, acting without direction from the pipeline contractor or subcontractor (or such person's agent), deliberately causes a violation of any requirement relating to pipeline safety under this chapter or any other law of the United States.

''(e) CONTRACTOR DEFINED.—In this section, the term 'contractor' means a company that performs safety-sensitive functions by contract for a pipeline.''.

(b) CIVIL PENALTY.—Section 60122(a) is amended by adding at the end the following:

''(3) A person violating section 60129, or an order issued thereunder, is liable to the Government for a civil penalty of not more than $1,000 for each violation. The penalties provided by paragraph (1) do not apply to a violation of section 60129 or an order issued thereunder.''.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 601 is amended by adding at the end the following:

''60129. Protection of employees providing pipeline safety information.''.

SEC. 775. STATE PIPELINE SAFETY ADVISORY COMMITTEES.

Within 90 days after receiving recommendations for improvements to pipeline safety from an advisory committee appointed by the Governor of any State, the Secretary of Transportation shall respond in writing to the committee setting forth what action, if any, the Secretary will take on those recommendations and the Secretary's reasons for acting or not acting upon any of the recommendations.

SEC. 776. FINES AND PENALTIES.

The Inspector General of the Department of Transportation shall conduct an analysis of the Department's assessment of fines and penalties on gas transmission and hazardous liquid pipelines, including the cost of corrective actions required by the Department in lieu of fines, and, no later than 6 months after the date of enactment of this Act, shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure on any findings and recommendations for actions by the Secretary or Congress to ensure the fines assessed are an effective deterrent for reducing safety risks.

SEC. 777. STUDY OF RIGHTS-OF-WAY.

The Secretary of Transportation is authorized to conduct a study on how best to preserve environmental resources in conjunction with maintaining pipeline rights-of-way. The study shall recognize pipeline operators' regulatory obligations to maintain rights-of-way and to protect public safety.

SEC. 778. STUDY OF NATURAL GAS RESERVE.

(a) FINDINGS.—Congress finds that:

(1) In the last few months, natural gas prices across the country have tripled.

(2) In California, natural gas prices have increased twenty-fold, from $3 per million British thermal units to nearly $60 per million British thermal units.

(3) One of the major causes of these price increases is a lack of supply, including a lack of natural gas reserves.

(4) The lack of a reserve was compounded by the rupture of an El Paso Natural Gas Company pipeline in Carlsbad, New Mexico on August 1, 2000.

(5) Improving pipeline safety will help prevent similar accidents that interrupt the supply of natural gas and will help save lives.

(6) It is also necessary to find solutions for the lack of natural gas reserves that could be used during emergencies.

(b) STUDY BY THE NATIONAL ACADEMY OF SCIENCES.—The Secretary of Energy shall request the National Academy of Sciences to—

(1) conduct a study to—

(A) determine the causes of recent increases in the price of natural gas, including whether the increases have been caused by problems with the supply of natural gas or by problems with the natural gas transmission system;

(B) identify any Federal or State policies that may have contributed to the price increases; and

(C) determine what Federal action would be necessary to improve the reserve supply of natural gas for use in situations of natural gas shortages and price increases, including determining the feasibility and advisability of a Federal strategic natural gas reserve system; and

(2) not later than 60 days after the date of enactment of this Act, submit to Congress a report on the results of the study.

SEC. 779. STUDY AND REPORT ON NATURAL GAS PIPELINE AND STORAGE FACILITIES IN NEW ENGLAND.

(a) STUDY.—The Federal Energy Regulatory Commission, in consultation with the Department of Energy, shall conduct a study on the natural gas pipeline transmission network in New England and natural gas storage facilities associated with that network. In carrying out the study, the Commission shall consider—

(1) the ability of natural gas pipeline and storage facilities in New England to meet current and projected demand by gas-fired power generation plants and other consumers;

(2) capacity constraints during unusual weather periods;

(3) potential constraint points in regional, interstate, and international pipeline capacity serving New England; and

(4) the quality and efficiency of the Federal environmental review and permitting process for natural gas pipelines.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Federal Energy Regulatory Commission shall prepare and submit to the Senate Committee on Energy and Natural Resources and the appropriate committee of the House of Representatives a report containing the results of the study conducted under subsection (a), including recommendations for addressing potential natural gas transmission and storage capacity problems in New England.

PART III—PIPELINE SECURITY SENSITIVE INFORMATION

SEC. 781. MEETING COMMUNITY RIGHT TO KNOW WITHOUT SECURITY RISKS.

Section 60117 is amended by adding at the end the following:

''(l) WITHHOLDING CERTAIN INFORMATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of this chapter requiring the Secretary to provide information obtained by the Secretary or an officer, employee, or agent in carrying out this chapter to State or local government officials, the public, or any other person, the Secretary shall withhold such information if it is information that is described in section 552(b)(1)(A) of title 5, United States Code.

''(2) CONDITIONAL RELEASE.—Notwithstanding paragraph (1), upon the receipt of assurances satisfactory to the Secretary that the information will be handled appropriately, the Secretary may provide information permitted to be withheld under that paragraph—

''(A) to the owner or operator of the affected pipeline system;

''(B) to an officer, employee or agent of a Federal, State, tribal, or local government, including a volunteer fire department, concerned with carrying out this chapter, with protecting the facilities, with protecting public safety, or with national security issues;

''(C) in an administrative or judicial proceeding brought under this chapter or an administrative or judicial proceeding that addresses terrorist actions or threats of such actions; or

''(D) to such other persons as the Secretary determines necessary to protect public safety and security.

''(3) REPORT TO CONGRESS.—The Secretary shall provide an annual report to the Congress, in appropriate form as determined by the Secretary, containing a summary of determinations made by the Secretary during the preceding year to withhold information from release under paragraph (1).''.

SEC. 782. TECHNICAL ASSISTANCE FOR SECURITY OF PIPELINE FACILITIES.

The Secretary of Transportation may provide technical assistance to an operator of a pipeline facility or to State, tribal, or local officials to prevent or respond to acts of terrorism that may impact the pipeline facility, including—

(1) actions by the Secretary that support the use of National Guard or State or Federal personnel to provide additional security for a pipeline facility at risk of terrorist attack or in response to such an attack;

(2) use of resources available to the Secretary to develop and implement security measures for a pipeline facility;

(3) identification of security issues with respect to the operation of a pipeline facility; and

(4) the provision of information and guidance on security practices that prevent damage to pipeline facilities from terrorist attacks.

SEC. 783. CRIMINAL PENALTIES FOR DAMAGING OR DESTROYING A FACILITY.

Section 60123(b) of title 49, United States Code, is amended—

(1) by striking ''or'' after ''gas pipeline facility'' and inserting a comma; and

(2) by inserting after ''liquid pipeline facility'' the following: '', or either an intrastate gas pipeline facility or an intrastate hazardous liquid pipeline facility that is used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce''.

DIVISION C—DIVERSIFYING ENERGY DEMAND AND IMPROVING EFFICIENCY

TITLE VIII—FUELS AND VEHICLES

Subtitle A—CAFE Standards, Alternative Fuels, and Advanced Technology

SEC. 801. INCREASED FUEL ECONOMY STANDARDS.

(a) REQUIREMENT FOR NEW REGULATIONS.—

(1) IN GENERAL.—The Secretary of Transportation shall issue, under section 32902 of title 49, United States Code, new regulations setting forth increased average fuel economy standards for automobiles that are determined on the basis of the maximum feasible average fuel economy levels for the automobiles, taking into consideration the matters set forth in subsection (f) of such section.

(2) TIME FOR ISSUING REGULATIONS.—

(A) NON-PASSENGER AUTOMOBILES.—For non-passenger automobiles, the Secretary of Transportation shall issue the final regulations not later than 15 months after the date of the enactment of this Act.

(B) PASSENGER AUTOMOBILES.—For passenger automobiles, the Secretary of Transportation shall issue—

(i) the proposed regulations not later than 180 days after the date of the enactment of this Act; and

(ii) the final regulations not later than 2 years after that date.

(b) PHASED INCREASES.—The regulations issued pursuant to subsection (a) shall specify standards that take effect successively over several vehicle model years not exceeding 15 vehicle model years.

(c) CLARIFICATION OF AUTHORITY TO AMEND PASSENGER AUTOMOBILE STANDARD.—Section 32902(b) of title 49, United States Code, is amended by inserting before the period at the end the following: ''or such other number as the Secretary prescribes under subsection (c)''.

(d) ENVIRONMENTAL ASSESSMENT.—When issuing final regulations setting forth increased average fuel economy standards under this section, the Secretary of Transportation shall also issue an environmental assessment of the effects of the implementation of the increased standards on the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Transportation for fiscal year 2003, to remain available until expended, $2,000,000 to carry out this section.

SEC. 802. EXPEDITED PROCEDURES FOR CONGRESSIONAL INCREASE IN FUEL ECONOMY STANDARDS.

(a) CONDITION FOR APPLICABILITY.—If the Secretary of Transportation fails to issue final regulations with respect to non-passenger automobiles under section 801, or fails to issue final regulations with respect to passenger automobiles under such section, on or before the date by which such final regulations are required by such section to be issued, respectively, then this section shall apply with respect to a bill described in subsection (b).

(b) BILL.—A bill referred to in this subsection is a bill that satisfies the following requirements:

(1) INTRODUCTION.—The bill is introduced by one or more Members of Congress not later than 60 days after the date referred to in subsection (a).

(2) TITLE.—The title of the bill is as follows: ''A bill to establish new average fuel economy standards for certain motor vehicles.''.

(3) TEXT.—The bill provides after the enacting clause only the text specified in subparagraph (A) or (B) or any provision described in subparagraph (C), as follows:

(A) NON-PASSENGER AUTOMOBILES.—In the case of a bill relating to a failure timely to issue final regulations relating to non-passenger automobiles, the following text:

''That, section 32902 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(__) NON-PASSENGER AUTOMOBILES.—The average fuel economy standard for non-passenger automobiles manufactured by a manufacturer in a model year after model year ____ shall be ____ miles per gallon.''', the first blank space being filled in with a subsection designation, the second blank space being filled in with the number of a year, and the third blank space being filled in with a number.

(B) PASSENGER AUTOMOBILES.—In the case of a bill relating to a failure timely to issue final regulations relating to passenger automobiles, the following text:

''That, section 32902(b) of title 49, United States Code, is amended to read as follows:

''(b) PASSENGER AUTOMOBILES.—Except as provided in this section, the average fuel economy standard for passenger automobiles manufactured by a manufacturer in a model year after model year ____ shall be ____ miles per gallon.''', the first blank space being filled in with the number of a year and the second blank space being filled in with a number.

(C) SUBSTITUTE TEXT.—Any text substituted by an amendment that is in order under subsection (c)(3).

(c) EXPEDITED PROCEDURES.—A bill described in subsection (b) shall be considered in a House of Congress in accordance with the procedures provided for the consideration of joint resolutions in paragraphs (3) through (8) of section 8066(c) of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98–473; 98 Stat. 1936), with the following exceptions:

(1) REFERENCES TO RESOLUTION.—The references in such paragraphs to a resolution shall be deemed to refer to the bill described in subsection (b).

(2) COMMITTEES OF JURISDICTION.—The committees to which the bill is referred under this subsection shall—

(A) in the Senate, be the Committee on Commerce, Science, and Transportation; and

(B) in the House of Representatives, be the Committee on Energy and Commerce.

(3) AMENDMENTS.—

(A) AMENDMENTS IN ORDER.—Only four amendments to the bill are in order in each House, as follows:

(i) Two amendments proposed by the majority leader of that House.

(ii) Two amendments proposed by the minority leader of that House.

(B) FORM AND CONTENT.—To be in order under subparagraph (A), an amendment shall propose to strike all after the enacting clause and substitute text that only includes the same text as is proposed to be stricken except for one or more different numbers in the text.

(C) DEBATE, ET CETERA.—Subparagraph (B) of section 8066(c)(5) of the Department of Defense Appropriations Act, 1985 (98 Stat. 1936) shall apply to the consideration of each amendment proposed pursuant to subparagraph (A) of this paragraph in the same manner as such subparagraph (B) applies to debatable motions.

SEC. 803. REVISED CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.

Section 32902(f) of title 49, United States Code, is amended to read as follows:

''(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider the following matters:

''(1) Technological feasibility.

''(2) Economic practicability.

''(3) The effect of other motor vehicle standards of the Government on fuel economy.

''(4) The need of the United States to conserve energy.

''(5) The desirability of reducing United States dependence on imported oil.

''(6) The effects of the average fuel economy standards on motor vehicle and passenger safety.

''(7) The effects of increased fuel economy on air quality.

''(8) The adverse effects of average fuel economy standards on the relative competitiveness of manufacturers.

''(9) The effects of compliance with average fuel economy standards on levels of employment in the United States.

''(10) The cost and lead time necessary for the introduction of the necessary new technologies.

''(11) The potential for advanced technology vehicles, such as hybrid and fuel cell vehicles, to contribute to the achievement of significant reductions in fuel consumption.

''(12) The extent to which the necessity for vehicle manufacturers to incur near-term costs to comply with the average fuel economy standards adversely affects the availability of resources for the development of advanced technology for the propulsion of motor vehicles.

''(13) The report of the National Research Council that is entitled 'Effectiveness and Impact of Corporate Average Fuel Economy Standards', issued in January 2002.''.

SEC. 804. EXTENSION OF MAXIMUM FUEL ECONOMY INCREASE FOR ALTERNATIVE FUELED VEHICLES.

Section 32906(a)(1) of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking ''1993–2004'' and inserting ''1993 through 2008''; and

(2) in subparagraph (B), by striking ''2005–2008'' and inserting ''2009 through 2012''.

SEC. 805. PROCUREMENT OF ALTERNATIVE FUELED AND HYBRID LIGHT DUTY TRUCKS.

(a) VEHICLE FLEETS NOT COVERED BY REQUIREMENT IN ENERGY POLICY ACT OF 1992.—

(1) HYBRID VEHICLES.—The head of each agency of the executive branch shall coordinate with the Administrator of General Services to ensure that only hybrid vehicles are procured by or for each agency fleet of light duty trucks that is not in a fleet of vehicles to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies.

(2) WAIVER AUTHORITY.—The head of an agency, in consultation with the Administrator, may waive the applicability of the policy regarding the procurement of hybrid vehicles in paragraph (1) to that agency to the extent that the head of that agency determines necessary—

(A) to meet specific requirements of the agency for capabilities of light duty trucks;

(B) to procure vehicles consistent with the standards applicable to the procurement of fleet vehicles for the Federal Government;

(C) to adjust to limitations on the commercial availability of light duty trucks that are hybrid vehicles; or

(D) to avoid the necessity of procuring a hybrid vehicle for the agency when each of the hybrid vehicles available for meeting the requirements of the agency has a cost to the United States that exceeds the costs of comparable nonhybrid vehicles by a factor that is significantly higher than the difference between—

(i) the real cost of the hybrid vehicle to retail purchasers, taking into account the benefit of any tax incentives available to retail purchasers for the purchase of the hybrid vehicle; and

(ii) the costs of the comparable nonhybrid vehicles to retail purchasers.

(3) APPLICABILITY TO PROCUREMENTS AFTER FISCAL YEAR 2004.—This subsection applies with respect to procurements of light duty trucks in fiscal year 2005 and subsequent fiscal years.

(b) REQUIREMENT TO EXCEED REQUIREMENT IN ENERGY POLICY ACT OF 1992.—

(1) LIGHT DUTY TRUCKS.—The head of each agency of the executive branch shall coordinate with the Administrator of General Services to ensure that, of the light duty trucks procured in fiscal years after fiscal year 2004 for the fleets of light duty vehicles of the agency to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies—

(A) 5 percent of the total number of such trucks that are procured in each of fiscal years 2005 and 2006 are alternative fueled vehicles or hybrid vehicles; and

(B) 10 percent of the total number of such trucks that are procured in each fiscal year after fiscal year 2006 are alternative fueled vehicles or hybrid vehicles.

(2) COUNTING OF TRUCKS.—Light duty trucks acquired for an agency of the executive branch that are counted to comply with section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) for a fiscal year shall be counted to determine the total number of light duty trucks procured for that agency for that fiscal year for the purposes of paragraph (1), but shall not be counted to satisfy the requirement in that paragraph.

(c) DEFINITIONS.—In this section:

(1) HYBRID VEHICLE.—The term ''hybrid vehicle'' means—

(A) a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

(i) an internal combustion or heat engine using combustible fuel; and

(ii) a rechargeable energy storage system; and

(B) any other vehicle that is defined as a hybrid vehicle in regulations prescribed by the Secretary of Energy for the administration of title III of the Energy Policy Act of 1992.

(2) ALTERNATIVE FUELED VEHICLE.—The term ''alternative fueled vehicle'' has the meaning given that term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(d) INAPPLICABILITY TO DEPARTMENT OF DEFENSE.—This section does not apply to the Department of Defense, which is subject to comparable requirements under section 318 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1055; 10 U.S.C. 2302 note).

SEC. 806. USE OF ALTERNATIVE FUELS.

(a) EXCLUSIVE USE OF ALTERNATIVE FUELS IN DUAL FUELED VEHICLES.—The head of each agency of the executive branch shall coordinate with the Administrator of General Services to ensure that, not later than January 1, 2009, the fuel actually used in the fleet of dual fueled vehicles used by the agency is an alternative fuel.

(b) WAIVER AUTHORITY.—

(1) CAPABILITY WAIVER.—

(A) AUTHORITY.—If the Secretary of Transportation determines that not all of the dual fueled vehicles can operate on alternative fuels at all times, the Secretary may waive the requirement of subsection (a) in part, but only to the extent that—

(i) not later than January 1, 2009, not less than 50 percent of the total annual volume of fuel used in the dual fueled vehicles shall be alternative fuels; and

(ii) not later than January 1, 2011, not less than 75 percent of the total annual volume of fuel used in the dual fueled vehicles shall be alternative fuels.

(B) EXPIRATION.—In no case may a waiver under subparagraph (A) remain in effect after December 31, 2012.

(2) REGIONAL FUEL AVAILABILITY WAIVER.—The Secretary may waive the applicability of the requirement of subsection (a) to vehicles used by an agency in a particular geographic area where the alternative fuel otherwise required to be used in the vehicles is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency.

(c) DEFINITIONS.—In this section:

(1) ALTERNATIVE FUEL.—The term ''alternative fuel'' has the meaning given that term in section 32901(a)(1) of title 49, United States Code.

(2) DUAL FUELED VEHICLE.—The term ''dual fueled vehicle'' has the meaning given the term ''dual fueled automobile'' in section 32901(a)(8) of title 49, United States Code.

(3) FLEET.—The term ''fleet'', with respect to dual fueled vehicles, has the meaning that is given that term with respect to light duty motor vehicles in section 301(9) of the Energy Policy Act of 1992 (42 U.S.C. 13211(9)).

SEC. 807. HYBRID ELECTRIC AND FUEL CELL VEHICLES.

(a) EXPANSION OF SCOPE.—The Secretary of Energy shall expand the research and development program of the Department of Energy on advanced technologies for improving the environmental cleanliness of vehicles to emphasize research and development on the following:

(1) Fuel cells, including—

(A) high temperature membranes for fuel cells; and

(B) fuel cell auxiliary power systems.

(2) Hydrogen storage.

(3) Advanced vehicle engine and emission control systems.

(4) Advanced batteries and power electronics for hybrid vehicles.

(5) Advanced fuels.

(6) Advanced materials.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Energy for fiscal year 2003, the amount of $225,000,000 for carrying out the expanded research and development program provided for under this section.

SEC. 808. DIESEL FUELED VEHICLES.

(a) DIESEL COMBUSTION AND AFTER TREATMENT TECHNOLOGIES.—The Secretary of Energy shall accelerate research and development directed toward the improvement of diesel combustion and after treatment technologies for use in diesel fueled motor vehicles.

(b) GOAL.—

(1) COMPLIANCE WITH TIER 2 EMISSION STANDARDS BY 2010.—The Secretary shall carry out subsection (a) with a view to developing and demonstrating diesel technology meeting tier 2 emission standards not later than 2010.

(2) TIER 2 EMISSION STANDARDS DEFINED.—In this subsection, the term ''tier 2 emission standards'' means the motor vehicle emission standards promulgated by the Administrator of the Environmental Protection Agency on February 10, 2000, under sections 202 and 211 of the Clean Air Act to apply to passenger cars, light trucks, and larger passenger vehicles of model years after the 2003 vehicle model year.

SEC. 809. FUEL CELL DEMONSTRATION.

(a) PROGRAM REQUIRED.—The Secretary of Energy and the Secretary of Defense shall jointly carry out a program to demonstrate—

(1) fuel cell technologies developed in the PNGV and Freedom Car programs;

(2) fuel cell technologies developed in research and development programs of the Department of Defense; and

(3) follow-on fuel cell technologies.

(b) PURPOSES OF PROGRAM.—The purposes of the program are to identify and support technological advances that are necessary to achieve accelerated availability of fuel cell technology for use both for nonmilitary and military purposes.

(c) COOPERATION WITH INDUSTRY.—

(1) IN GENERAL.—The demonstration program shall be carried out in cooperation with industry, including the automobile manufacturing industry and the automotive systems and component suppliers industry.

(2) COST SHARING.—The Secretary of Energy and the Secretary of Defense shall provide for industry to bear, in cash or in kind, at least one-half of the total cost of carrying out the demonstration program.

(d) DEFINITIONS.—In this section:

(1) PNGV PROGRAM.—The term ''PNGV program'' means the Partnership for a New Generation of Vehicles, a cooperative program engaged in by the Departments of Commerce, Energy, Transportation, and Defense, the Environmental Protection Agency, the National Science

Foundation, and the National Aeronautics and Space Administration with the automotive industry for the purpose of developing a new generation of vehicles with capabilities resulting in significantly improved fuel efficiency together with low emissions without compromising the safety, performance, affordability, or utility of the vehicles.

(2) FREEDOM CAR PROGRAM.—The term ''Freedom Car program'' means a cooperative research program engaged in by the Department of Energy with the United States Council on Automotive Research as a follow-on to the PNGV program.

SEC. 810. BUS REPLACEMENT.

(a) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall carry out a study to determine how best to provide for converting the composition of the fleets of buses in metropolitan areas and school systems from buses utilizing current diesel technology to—

(1) buses that draw propulsion from onboard fuel cells;

(2) buses that are hybrid electric vehicles;

(3) buses that are fueled by clean-burning fuels, such as renewable fuels (including agriculture-based biodiesel fuels), natural gas, and ultra-low sulphur diesel;

(4) buses that are powered by clean diesel engines: or

(5) an assortment of buses described in paragraphs (1), (2), (3), and (4).

(b) REPORT.—

(1) REQUIREMENT.—The Secretary of Transportation shall submit a report on the results of the study on bus fleet conversions under subsection (a) to Congress.

(2) CONTENT.—The report on bus fleet conversions shall include the following:

(A) An assessment of effectuating conversions by the following means:

(i) Replacement of buses.

(ii) Replacement of power and propulsion systems in buses utilizing current diesel technology.

(iii) Other means.

(B) Feasible schedules for carrying out the conversions.

(C) Estimated costs of carrying out the conversions.

(D) An assessment of the benefits of the conversions in terms of emissions control and reduction of fuel consumption.

SEC. 811. AVERAGE FUEL ECONOMY STANDARDS FOR PICKUP TRUCKS.

(a) IN GENERAL.—Section 32902(a) of title 49, United States Code, is amended—

(1) by inserting ''(1)'' after the after ''AUTOMOBILES.—''; and

(2) by adding at the end the following new paragraph:

''(2) The average fuel economy standard for pickup trucks manufactured by a manufacturer in a model year after model year 2004 shall be no higher than 20.7 miles per gallon. No average fuel economy standard prescribed under another provision of this section shall apply to pickup trucks.''.

(b) DEFINITION OF PICKUP TRUCK.—Section 32901(a) of such title is amended by adding at the end the following new paragraph:

''(17) 'pickup truck' has the meaning given that term in regulations prescribed by the Secretary for the administration of this chapter, as in effect on January 1, 2002, except that such term shall also include any additional vehicle that the Secretary defines as a pickup truck in regulations prescribed for the administration of this chapter after such date.''.

SEC. 812. EXCEPTION TO HOV PASSENGER REQUIREMENTS FOR ALTERNATIVE FUEL VEHICLES.

Section 102(a)(1) of title 23, United States Code, is amended by inserting after ''required'' the following: ''(unless, in the discretion of the State transportation department, the vehicle is being operated on, or is being fueled by, an alternative fuel (as defined in section 301(2) of the Energy Policy Act of 1992 (42 U.S.C. 13211(2)))''.

SEC. 813. DATA COLLECTION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following:

''(m) In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels consumption in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information retrospectively to 1998, both on a national basis and a regional basis, including—

(1) the quantity of renewable fuels produced;

(2) the cost of production;

(3) the cost of blending and marketing;

(4) the quantity of renewable fuels blended;

(5) the quantity of renewable fuels imported; and

(6) market price data.

SEC. 814. GREEN SCHOOL BUS PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy and the Secretary of Transportation shall jointly establish a pilot program for awarding grants on a competitive basis to eligible entities for the demonstration and commercial application of alternative fuel school buses and ultra-low sulfur diesel school buses.

(b) REQUIREMENTS.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall establish and publish in the Federal Register grant requirements on eligibility for assistance, and on implementation of the program established under subsection (a), including certification requirements to ensure compliance with this subtitle.

(c) SOLICITATION.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall solicit proposals for grants under this section.

(d) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to a local governmental entity responsible for providing school bus service for one or more public school systems; or

(2) jointly to an entity described in paragraph (1) and a contracting entity that provides school bus service to the public school system or systems.

(e) TYPES OF GRANTS.—

(1) IN GENERAL.—Grants under this section shall be for the demonstration and commercial application of technologies to facilitate the use of alternative fuel school buses and ultra-low sulfur diesel school buses instead of buses manufactured before model year 1977 and diesel-powered buses manufactured before model year 1991.

(2) NO ECONOMIC BENEFIT.—Other than the receipt of the grant, a recipient of a grant under this section may not receive any economic benefit in connection with the receipt of the grant.

(3) PRIORITY OF GRANT APPLICATIONS.—The Secretary shall give priority to awarding grants to applicants who can demonstrate the use of alternative fuel buses and ultra-low sulfur diesel school buses instead of buses manufactured before model year 1977.

(f) CONDITIONS OF GRANT.—A grant provided under this section shall include the following conditions:

(1) All buses acquired with funds provided under the grant shall be operated as part of the school bus fleet for which the grant was made for a minimum of 5 years.

(2) Funds provided under the grant may only be used—

(A) to pay the cost, except as provided in paragraph (3), of new alternative fuel school buses or ultra-low sulfur diesel school buses, including State taxes and contract fees; and

(B) to provide—

(i) up to 10 percent of the price of the alternative fuel buses acquired, for necessary alternative fuel infrastructure if the infrastructure will only be available to the grant recipient; and

(ii) up to 15 percent of the price of the alternative fuel buses acquired, for necessary alternative fuel infrastructure if the infrastructure will be available to the grant recipient and to other bus fleets.

(3) The grant recipient shall be required to provide at least the lesser of 15 percent of the total cost of each bus received or $15,000 per bus.

(4) In the case of a grant recipient receiving a grant to demonstrate ultra-low sulfur diesel school buses, the grant recipient shall be required to provide documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant, and a commitment by the applicant to use such fuel in carrying out the purposes of the grant.

(g) BUSES.—Funding under a grant made under this section may only be used to demonstrate the use of new alternative fuel school buses or ultra-low sulfur diesel school buses that—

(1) have a gross vehicle weight greater than 14,000 pounds;

(2) are powered by a heavy duty engine;

(3) in the case of alternative fuel school buses, emit not more than—

(A) for buses manufactured in model year 2002, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(B) for buses manufactured in model years 2003 through 2006, 1.8 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(4) in the case of ultra-low sulfur diesel school buses, emit not more than the lesser of—

(A) the emissions of nonmethane hydrocarbons, oxides of nitrogen, and particulate matter of the best performing technology of the same class of ultra-low sulfur diesel school buses commercially available at the time the grant is made; or

(B) the applicable following amounts—

(i) for buses manufactured in model year 2002 or 2003, 3.0 grams per brake horsepower-hour of oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(ii) for buses manufactured in model years 2004 through 2006, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter.

(h) DEPLOYMENT AND DISTRIBUTION.—The Secretary shall seek to the maximum extent practicable to achieve nationwide deployment of alternative fuel school buses through the program under this section, and shall ensure a broad geographic distribution of grant awards, with a goal of no State receiving more than 10 percent of the grant funding made available under this section for a fiscal year.

(i) LIMIT ON FUNDING.—The Secretary shall provide not less than 20 percent and not more than 25 percent of the grant funding made available under this section for any fiscal year for the acquisition of ultra-low sulfur diesel school buses.

(j) DEFINITIONS.—For purposes of this section—

(1) the term ''alternative fuel school bus'' means a bus powered substantially by electricity (including electricity supplied by a fuel cell), or by liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, propane, or methanol or ethanol at no less than 85 percent by volume;

(2) the term ''idling'' means not turning off an engine while remaining stationary for more than approximately 3 minutes; and

(3) the term ''ultra-low sulfur diesel school bus'' means a school bus powered by diesel fuel which contains sulfur at not more than 15 parts per million.

(k) REDUCTION OF SCHOOL BUS IDLING.—Each local educational agency (as defined in section

9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that receives Federal funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is encouraged to develop a policy to reduce the incidence of school buses idling at schools when picking up and unloading students.

SEC. 815. FUEL CELL BUS DEVELOPMENT AND DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program for entering into cooperative agreements with private sector fuel cell bus developers for the development of fuel cell-powered school buses, and subsequently with not less than two units of local government using natural gas-powered school buses and such private sector fuel cell bus developers to demonstrate the use of fuel cell-powered school buses.

(b) COST SHARING.—The non-Federal contribution for activities funded under this section shall be not less than—

(1) 20 percent for fuel infrastructure development activities; and

(2) 50 percent for demonstration activities and for development activities not described in paragraph (1).

(c) FUNDING.—No more than $25,000,000 of the amounts authorized under section 815 may be used for carrying out this section for the period encompassing fiscal years 2003 through 2006.

(d) REPORTS TO CONGRESS.—Not later than 3 years after the date of the enactment of this Act, and not later than October 1, 2006, the Secretary shall transmit to the appropriate congressional committees a report that—

(1) evaluates the process of converting natural gas infrastructure to accommodate fuel cell-powered school buses; and

(2) assesses the results of the development and demonstration program under this section.

SEC. 816. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Energy for carrying out sections 814 and 815, to remain available until expended—

(1) $50,000,000 for fiscal year 2003;

(2) $60,000,000 for fiscal year 2004;

(3) $70,000,000 for fiscal year 2005; and

(4) $80,000,000 for fiscal year 2006.

SEC. 817. TEMPORARY BIODIESEL CREDIT EXPANSION.

(a) BIODIESEL CREDIT EXPANSION.—Section 312(b) of the Energy Policy Act of 1992 (42 U.S.C. 13220(b)) is amended by striking paragraph (2) and inserting the following:

''(2) USE.—

''(A) IN GENERAL.—A fleet or covered person—

''(i) may use credits allocated under subsection (a) to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under this title, title IV, and title V; but

''(ii) may use credits allocated under subsection (a) to satisfy 100 percent of the alternative fueled vehicle requirements of a fleet or covered person under title V for 1 or more of model years 2002 through 2005.

''(B) APPLICABILITY.—Subparagraph (A) does not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 501(a)(2)(A).''.

(b) TREATMENT AS SECTION 508 CREDITS.—Section 312(c) of the Energy Policy Act of 1992 (42 U.S.C. 13220(c)) is amended—

(1) in the subsection heading, by striking ''CREDIT NOT'' and inserting ''TREATMENT AS''; and

(2) by striking ''shall not be considered'' and inserting ''shall be treated as''.

(c) ALTERNATIVE FUELED VEHICLE STUDY AND REPORT.—

(1) DEFINITIONS.—In this subsection:

(A) ALTERNATIVE FUEL.—The term ''alternative fuel'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(B) ALTERNATIVE FUELED VEHICLE.—The term ''alternative fueled vehicle'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(C) LIGHT DUTY MOTOR VEHICLE.—The term ''light duty motor vehicle'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(D) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) BIODIESEL CREDIT EXTENSION STUDY.—As soon as practicable after the date of enactment of this Act, the Secretary shall conduct a study—

(A) to determine the availability and cost of light duty motor vehicles that qualify as alternative fueled vehicles under title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.); and

(B) to compare—

(i) the availability and cost of biodiesel; with

(ii) the availability and cost of fuels that qualify as alternative fuels under title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.).

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report that—

(A) describes the results of the study conducted under paragraph (2); and

(B) includes any recommendations of the Secretary for legislation to extend the temporary credit provided under subsection (a) beyond model year 2005.

SEC. 818. NEIGHBORHOOD ELECTRIC VEHICLES.

Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—

(1) by striking ''or a dual fueled vehicle'' and inserting '', a dual fueled vehicle, or a neighborhood electric vehicle'';

(2) by striking ''and'' at the end of paragraph (13);

(3) by striking the period at the end of subparagraph (14) and inserting ''; and''; and

(4) by adding at the end the following:

''(15) the term 'neighborhood electric vehicle' means a motor vehicle that qualifies as both—

''(A) a low-speed vehicle, as such term is defined in section 571.3(b) of title 49, Code of Federal Regulations; and

''(B) a zero-emission vehicle, as such term is defined in section 86.1703–99 of title 40, Code of Federal Regulations.''.

SEC. 819. CREDIT FOR HYBRID VEHICLES, DEDICATED ALTERNATIVE FUEL VEHICLES, AND INFRASTRUCTURE.

Section 507 of the Energy Policy Act of 1992 (42 U.S.C. 13258) is amended by adding at the end the following:

''(p) CREDITS FOR NEW QUALIFIED HYBRID MOTOR VEHICLES.—

''(1) DEFINITIONS.—In this subsection:

''(A) 2000 MODEL YEAR CITY FUEL EFFICIENCY.—The term '2000 model year city fuel efficiency', with respect to a motor vehicle, means fuel efficiency determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

"If vehicle inertia weight class is:	***The 2000 model year city fuel efficiency is:***
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 to 8,500 lbs	11.1 mpg.

''(ii) In the case of a light truck:

"If vehicle inertia weight class is:	***The 2000 model year city fuel efficiency is:***
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.0 mpg.

''(B) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(C) ENERGY STORAGE DEVICE.—The term 'energy storage device' means an onboard rechargeable energy storage system or similar storage device.

''(D) FUEL EFFICIENCY.—The term 'fuel efficiency' means the percentage increased fuel efficiency specified in table 1 in paragraph (2)(C) over the average 2000 model year city fuel efficiency of vehicles in the same weight class.

''(E) MAXIMUM AVAILABLE POWER.—The term 'maximum available power', with respect to a new qualified hybrid motor vehicle that is a passenger vehicle or light truck, means the quotient obtained by dividing—

''(i) the maximum power available from the electrical storage device of the new qualified hybrid motor vehicle, during a standard 10-second pulse power or equivalent test; by

''(ii) the sum of—

''(I) the maximum power described in clause (i); and

''(II) the net power of the internal combustion or heat engine, as determined in accordance with standards established by the Society of Automobile Engineers.

''(F) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given the term in section 216 of the Clean Air Act (42 U.S.C. 7550).

''(G) NEW QUALIFIED HYBRID MOTOR VEHICLE.—The term 'new qualified hybrid motor vehicle' means a motor vehicle that—

''(i) draws propulsion energy from both—

''(I) an internal combustion engine (or heat engine that uses combustible fuel); and

''(II) an energy storage device;

''(ii) in the case of a passenger automobile or light truck—

''(I) in the case of a 2001 or later model vehicle, receives a certificate of conformity under the Clean Air Act (42 U.S.C. 7401 et seq.) and produces emissions at a level that is at or below the applicable qualifying California low emissions vehicle standards established under authority of section 243(e)(2) of the Clean Air Act (42 U.S.C. 7583(e)(2)) for that make and model year; and

''(II) in the case of a 2004 or later model vehicle, is certified by the Administrator as producing emissions at a level that is at or below the level established for Bin 5 vehicles in the Tier 2 regulations promulgated by the Administrator under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year vehicle; and

''(iii) employs a vehicle braking system that recovers waste energy to charge an energy storage device.

''(H) VEHICLE INERTIA WEIGHT CLASS.—The term 'vehicle inertia weight class' has the meaning given the term in regulations promulgated by the Administrator for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(2) ALLOCATION.—

''(A) IN GENERAL.—The Secretary shall allocate a partial credit to a fleet or covered person

under this title if the fleet or person acquires a new qualified hybrid motor vehicle that is eligible to receive a credit under each of the tables in subparagraph (C).

''(B) AMOUNT.—The amount of a partial credit allocated under subparagraph (A) for a vehicle described in that subparagraph shall be equal to the sum of—

''(i) the partial credits determined under table 1 in subparagraph (C); and

''(ii) the partial credits determined under table 2 in subparagraph (C).

''(C) TABLES.—The tables referred to in subparagraphs (A) and (B) are as follows:

''Table 1

''Partial credit for increased fuel efficiency:	***Amount of credit:***
At least 125% but less than 150% of 2000 model year city fuel efficiency	*0.14*
At least 150% but less than 175% of 2000 model year city fuel efficiency	*0.21*
At least 175% but less than 200% of 2000 model year city fuel efficiency	*0.28*
At least 200% but less than 225% of 2000 model year city fuel efficiency	*0.35*
At least 225% but less than 250% of 2000 model year city fuel efficiency	*0.50.*

''Table 2

''Partial credit for 'Maximum Available Power':	***Amount of credit:***
At least 5% but less than 10%	*0.125*
At least 10% but less than 20%	*0.250*
At least 20% but less than 30%	*0.375*
At least 30% or more	*0.500.*

''(D) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the qualified hybrid motor vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

''(3) REGULATIONS.—The Secretary shall promulgate regulations under which any Federal fleet that acquires a new qualified hybrid motor vehicle will receive partial credits determined under the tables contained in paragraph (2)(C) for purposes of meeting the requirements of section 303.

''(q) CREDIT FOR SUBSTANTIAL CONTRIBUTION TOWARDS USE OF DEDICATED VEHICLES IN NONCOVERED FLEETS.—

''(1) DEFINITIONS.—In this subsection:

''(A) DEDICATED VEHICLE.—The term 'dedicated vehicle' includes—

''(i) a light, medium, or heavy duty vehicle; and

''(ii) a neighborhood electric vehicle.

''(B) MEDIUM OR HEAVY DUTY VEHICLE.—The term 'medium or heavy duty vehicle' includes a vehicle that—

''(i) operates solely on alternative fuel; and

''(ii)(I) in the case of a medium duty vehicle, has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds; or

''(II) in the case of a heavy duty vehicle, has a gross vehicle weight rating of more than 14,000 pounds.

''(C) SUBSTANTIAL CONTRIBUTION.—The term 'substantial contribution' (equal to 1 full credit) means not less than $15,000 in cash or in kind services, as determined by the Secretary.

''(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title if the fleet or person makes a substantial contribution toward the acquisition and use of dedicated vehicles by a person that owns, operates, leases, or otherwise controls a fleet that is not covered by this title.

''(3) MULTIPLE CREDITS FOR MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this title if the fleet or person acquires a medium or heavy duty dedicated vehicle.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

''(5) LIMITATION.—Per vehicle credits acquired under this subsection shall not exceed the per vehicle credits allowed under this section to a fleet for qualifying vehicles in each of the weight categories (light, medium, or heavy duty).

''(r) CREDIT FOR SUBSTANTIAL INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

''(1) DEFINITIONS.—In this section, the term 'qualifying infrastructure' means—

''(A) equipment required to refuel or recharge alternative fueled vehicles;

''(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles;

''(C) training programs, educational materials, or other activities necessary to provide information regarding the operation, maintenance, or benefits associated with alternative fueled vehicles; and

''(D) such other activities the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

''(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

''(3) AMOUNT.—For the purposes of credits under this subsection—

''(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or in kind services, as determined by the Secretary; and

''(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.''.

SEC. 820. RENEWABLE CONTENT OF MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended—

(1) by redesignating subsection (o) as subsection (q); and

(2) by inserting after subsection (n) the following:

''(o) RENEWABLE FUEL PPROGRAM.—

''(1) DEFINITIONS.—In this section:

''(A) CELLULOSIC BIOMASS ETHANOL.—The term 'cellulosic biomass ethanol' means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

''(i) dedicated energy crops and trees;

''(ii) wood and wood residues;

''(iii) plants;

''(iv) grasses;

''(v) agricultural residues;

''(vi) fibers;

''(vii) animal wastes and other waste materials; and

''(viii) municipal solid waste.

''(B) RENEWABLE FUEL.—

''(i) IN GENERAL.—The term 'renewable fuel' means motor vehicle fuel that—

''(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

''(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

''(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

''(ii) INCLUSION.—The term 'renewable fuel' includes cellulosic biomass ethanol and biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)).

''(C) SMALL REFINERY.—The term 'small refinery' means a refinery for which average aggregate daily crude oil throughput for the calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

''(2) RENEWABLE FUEL PROGRAM.—

''(A) IN GENERAL.—Not later than 1 year from enactment of this provision, the Administrator shall promulgate regulations ensuring that gasoline sold or dispensed to consumers in the United States, on an annual average basis, contains the applicable volume of renewable fuel as specified in subparagraph (B). Regardless of the date of promulgation, such regulations shall contain compliance provisions for refiners, blenders, and importers, as appropriate, to ensure that the requirements of this section are met, but shall not restrict where renewables can be used, or impose any per-gallon obligation for the use of renewables. If the Administrator does not promulgate such regulations, the applicable percentage, on a volume percentage of gasoline basis, shall be 1.62 in 2004.

''(B) APPLICABLE VOLUME.—

(i) CALENDAR YEARS 2004 THROUGH 2012.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2004 through 2012 shall be determined in accordance with the following table:

Applicable volume of renewable fuel

''Calendar year:	***(In billions of gallons)***
2004	*2.3*
2005	*2.6*
2006	*2.9*
2007	*3.2*
2008	*3.5*
2009	*3.9*
2010	*4.3*
2011	*4.7*
2012	*5.0.*

''(ii) CALENDAR YEAR 2013 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be equal to the product obtained by multiplying—

''(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce in the calendar year; and

''(II) the ratio that—

''(aa) 5.0 billion gallons of renewable fuels; bears to

''(bb) the number of gallons of gasoline sold or introduced into commerce in calendar year 2012.

''(3) APPLICABLE PERCENTAGES.—Not later than October 31 of each calendar year, through 2011, the Administrator of the Energy Information Administration shall provide the Administrator an estimate of the volumes of gasoline sales in the United States for the coming calendar year. Based on such estimates, the Administrator shall by November 30 of each calendar year, through 2011, determine and publish in the Federal Register, the renewable fuel obligation, on a volume percentage of gasoline basis, applicable to refiners, blenders, distributors and importers, as appropriate, for the coming calendar year, to ensure that the requirements of paragraph (2) are met. For each calendar year, the Administrator shall establish a

single applicable percentage that applies to all parties, and make provision to avoid redundant obligations. In determining the applicable percentages, the Administrator shall make adjustments to account for the use of renewable fuels by exempt small refineries during the previous year.

''(4) CELLULOSIC BIOMASS ETHANOL.—For the purpose of paragraph (2), 1 gallon of cellulosic biomass ethanol shall be considered to be the equivalent of 1.5 gallon of renewable fuel.

''(5) CREDIT PROGRAM.—

''(A) IN GENERAL.—The regulations promulgated to carry out this subsection shall provide for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2). Such regulations shall provide for the generation of an appropriate amount of credits for biodiesel fuel. If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

''(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

''(C) LIFE OF CREDITS.—A credit generated under this paragraph shall be valid to show compliance:

(i) in the calendar year in which the credit was generated or the next calendar year, or

(ii) in the calendar year in which the credit was generated or next two consecutive calendar years if the Administrator promulgates regulations under paragraph (6).

''(D) INABILITY TO PURCHASE SUFFICIENT CREDITS.—The regulations promulgated to carry out this subsection shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements under paragraph (2) to carry forward a renewables deficit provided that, in the calendar year following the year in which the renewables deficit is created, such person shall achieve compliance with the renewables requirement under paragraph (2), and shall generate or purchase additional renewables credits to offset the renewables deficit of the previous year.

''(6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

''(A) STUDY.—For each of calendar years 2004 through 2012, the Administrator of the Energy Information Administration, shall conduct a study of renewable fuels blending to determine whether there are excessive seasonal variations in the use of renewable fuels.

''(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator shall promulgate regulations to ensure that 35 percent or more of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) is used during each of the periods specified in subparagraph (D) of each subsequent calendar year.

''(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

''(i) less than 35 percent of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) has been used during one of the periods specified in subparagraph (D) of the calendar year; and

''(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years.

''(D) PERIODS.—The two periods referred to in this paragraph are—

''(i) April through September; and

''(ii) January through March and October through December.

''(E) EXCLUSIONS.—Renewable fuels blended or consumed in 2004 in a state which has received a waiver under section 209(b) shall not be included in the study in subparagraph (A).

''(7) WAIVERS.—

''(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirement of paragraph (2) in whole or in part on petition by one or more States by reducing the national quantity of renewable fuel required under this subsection—

''(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

''(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply or distribution capacity to meet the requirement.

''(B) PETITIONS FOR WAIVERS.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirement of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

''(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

''(8) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—Not later than 180 days from enactment, the Secretary of Energy shall complete for the Administrator a study assessing whether the renewable fuels requirement under paragraph (2) will likely result in significant adverse consumer impacts in 2004, on a national, regional or state basis. Such study shall evaluate renewable fuel supplies and prices, blendstock supplies, and supply and distribution system capabilities. Based on such study, the Secretary shall make specific recommendations to the Administrator regarding waiver of the requirements of paragraph (2), in whole or in part, to avoid any such adverse impacts. Within 270 days from enactment, the Administrator shall, consistent with the recommendations of the Secretary waive, in whole or in part, the renewable fuels requirement under paragraph (2) by reducing the national quantity of renewable fuel required under this subsection in 2004. This provision shall not be interpreted as limiting the Administrator's authority to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7), pertaining to waivers.

''(9) SMALL REFINERIES.—

''(A) IN GENERAL.—The requirement of paragraph (2) shall not apply to small refineries until January 1, 2008. Not later than December 31, 2006, the Secretary of Energy shall complete for the Administrator a study to determine whether the requirement of paragraph (2) would impose a disproportionate economic hardship on small refineries. For any small refinery that the Secretary of Energy determines would experience a disproportionate economic hardship, the Administrator shall extend the small refinery exemption for such small refinery for no less than two additional years.

''(B) ECONOMIC HARDSHIP.—

''(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption from the requirement of paragraph (2) for the reason of disproportionate economic hardship. In evaluating a hardship petition, the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study in addition to other economic factors.

''(ii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the receipt of the petition.

''(C) CREDIT PROGRAM.—If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

''(D) OPT-IN FOR SMALL REFINERS.—A small refinery shall be subject to the requirements of this section if it notifies the Administrator that it waives the exemption under subparagraph (A).

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''or (n)'' each place it appears and inserting ''(n) or (o)''; and

(B) in the second sentence, by striking ''or (m)'' and inserting ''(m), or (o)''; and

(2) in the first sentence of paragraph (2), by striking ''and (n)'' each place it appears and inserting ''(n), and (o)''.

(c) EXCLUSION FROM ETHANOL WAIVER.—Section 211(h) of the Clean Air Act (42 U.S.C. 7545(h)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

''(5) EXCLUSION FROM ETHANOL WAIVER.—

''(A) PROMULGATION OF REGULATIONS.—Upon notification, accompanied by supporting documentation, from the Governor of a State that the Reid vapor pressure limitation established by paragraph (4) will increase emissions that contribute to air pollution in any area in the State, the Administrator shall, by regulation, apply, in lieu of the Reid vapor pressure limitation established by paragraph (4), the Reid vapor pressure limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported or introduced into commerce in the area during the high ozone season.

''(B) DEADLINE FOR PROMULGATION.—The Administrator shall promulgate regulations under subparagraph (A) not later than 90 days after the date of receipt of a notification from a Governor under that subparagraph.

''(C) EFFECTIVE DATE.—

''(i) IN GENERAL.—With respect to an area in a State for which the Governor submits a notification under subparagraph (A), the regulations under that subparagraph shall take effect on the later of—

''(I) the first day of the first high ozone season for the area that begins after the date of receipt of the notification; or

''(II) 1 year after the date of receipt of the notification.

''(ii) EXTENSION OF EFFECTIVE DATE BASED ON DETERMINATION OF INSUFFICIENT SUPPLY.—

''(I) IN GENERAL.—If, after receipt of a notification with respect to an area from a Governor of a State under subparagraph (A), the Administrator determines, on the Administrator's own motion or on petition of any person and after consultation with the Secretary of Energy, that the promulgation of regulations described in subparagraph (A) would result in an insufficient supply of gasoline in the State, the Administrator, by regulation—

''(aa) shall extend the effective date of the regulations under clause (i) with respect to the area for not more than 1 year; and

''(bb) may renew the extension under item (aa) for two additional periods, each of which shall not exceed 1 year.

''(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.''.

(d) SURVEY OF RENEWABLE FUEL MARKET.—

(1) SURVEY AND REPORT.—Not later than December 1, 2005, and annually thereafter, the Administrator shall—

(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

(i) conventional gasoline containing ethanol;

(ii) reformulated gasoline containing ethanol;

(iii) conventional gasoline containing renewable fuel; and

(iv) reformulated gasoline containing renewable fuel; and

(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Administrator may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator shall rely, to the extent practicable, on existing reporting and recordkeeping requirements to avoid duplicative requirements.

(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.

(e) RENEWABLE FUELS SAFE HARBOR.—

(1) IN GENERAL.—Notwithstanding any other provision of federal or state law, no renewable fuel, as defined by this Act, used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing such renewable fuel, shall be deemed defective in design or manufacture by virtue of the fact that it is, or contains, such a renewable fuel, if it does not violate a control or prohibition imposed by the Administrator under section 211 of the Clean Air Act, as amended by this Act, and the manufacturer is in compliance with all requests for information under section 211(b) of the Clean Air Act, as amended by this Act. In the event that the safe harbor under this section does not apply, the existence of a design defect or manufacturing defect shall be determined under otherwise applicable law.

(2) EXCEPTIONS.—This subsection shall not apply to ethers.

(3) EFFECTIVE DATE.—This subsection shall be effective as of the date of enactment and shall apply with respect to all claims filed on or after that date.

SEC. 820A. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

Title III of the Energy Policy Act of 1992 is amended by striking section 306 (42 U.S.C. 13215) and inserting the following:

"SEC. 306. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

''(a) ETHANOL-BLENDED GASOLINE.—The head of each Federal agency shall ensure that, in areas in which ethanol-blended gasoline is reasonably available at a generally competitive price, the Federal agency purchases ethanol-blended gasoline containing at least 10 percent ethanol rather than nonethanol-blended gasoline, for use in vehicles used by the agency that use gasoline.

''(b) BIODIESEL.—

''(1) DEFINITION OF BIODIESEL.—In this subsection, the term 'biodiesel' has the meaning given the term in section 312(f).

''(2) REQUIREMENT.—The head of each Federal agency shall ensure that the Federal agency purchases, for use in fueling fleet vehicles that use diesel fuel used by the Federal agency at the location at which fleet vehicles of the Federal agency are centrally fueled, in areas in which the biodiesel-blended diesel fuel described in paragraphs (A) and (B) is available at a generally competitive price—

''(A) as of the date that is 5 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 2 percent biodiesel, rather than nonbiodiesel-blended diesel fuel; and

''(B) as of the date that is 10 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel, rather than nonbiodiesel-blended diesel fuel.

''(3) REQUIREMENT OF FEDERAL LAW.—The provisions of this subsection shall not be considered a requirement of Federal law for the purposes of section 312.

''(c) EXEMPTION.—This section does not apply to fuel used in vehicles excluded from the definition of 'fleet' by subparagraphs (A) through (H) of section 301(9).''.

SEC. 820B. COMMERCIAL BYPRODUCTS FROM MUNICIPAL SOLID WASTE LOAN GUARANTEE PROGRAM.

(a) DEFINITION OF MUNICIPAL SOLID WASTE.—In this section, the term ''municipal solid waste'' has the meaning given the term ''solid waste'' in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste into fuel ethanol and other commercial byproducts.

(c) REQUIREMENTS.—The Secretary may provide a loan guarantee under subsection (b) to an applicant if—

(1) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in subsection (b);

(2) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(3) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(d) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(1) meet all applicable Federal and State permitting requirements;

(2) are most likely to be successful; and

(3) are located in local markets that have the greatest need for the facility because of—

(A) the limited availability of land for waste disposal; or

(B) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(e) MATURITY.—A loan guaranteed under subsection (b) shall have a maturity of not more than 20 years.

(f) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under subsection (b) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(g) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under subsection (b) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(h) GUARANTEE FEE.—The recipient of a loan guarantee under subsection (b) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(i) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(j) REPORTS.—Until each guaranteed loan under this section has been repaid in full, the Secretary shall annually submit to Congress an report on the activities of the Secretary under this section.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(l) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a loan guarantee under subsection (b) terminates on the date that is 10 years after the date of enactment of this Act.

Subtitle B—Additional Fuel Efficiency Measures

SEC. 821. FUEL EFFICIENCY OF THE FEDERAL FLEET OF AUTOMOBILES.

Section 32917 of title 49, United States Code, is amended to read as follows:

"§ 32917. Standards for executive agency automobiles

''(a) BASELINE AVERAGE FUEL ECONOMY.—The head of each executive agency shall determine, for all automobiles in the agency's fleet of automobiles that were leased or bought as a new vehicle in fiscal year 1999, the average fuel economy for such automobiles. For the purposes of this section, the average fuel economy so determined shall be the baseline average fuel economy for the agency's fleet of automobiles.

''(b) INCREASE OF AVERAGE FUEL ECONOMY.—The head of an executive agency shall manage the procurement of automobiles for that agency in such a manner that—

''(1) not later than September 30, 2003, the average fuel economy of the new automobiles in the agency's fleet of automobiles is not less than 1 mile per gallon higher than the baseline average fuel economy determined under subsection (a) for that fleet; and

''(2) not later than September 30, 2005, the average fuel economy of the new automobiles in the agency's fleet of automobiles is not less than 3 miles per gallon higher than the baseline average fuel economy determined under subsection (a) for that fleet.

''(c) CALCULATION OF AVERAGE FUEL ECONOMY.—Average fuel economy shall be calculated for the purposes of this section in accordance with guidance which the Secretary of Transportation shall prescribe for the implementation of this section.

''(d) DEFINITIONS.—In this section:

''(1) The term 'automobile' does not include any vehicle designed for combat-related missions, law enforcement work, or emergency rescue work.

''(2) The term 'executive agency' has the meaning given that term in section 105 of title 5.

''(3) The term 'new automobile', with respect to the fleet of automobiles of an executive agency, means an automobile that is leased for at least 60 consecutive days or bought, by or for the agency, after September 30, 1999.''.

SEC. 822. IDLING REDUCTION SYSTEMS IN HEAVY DUTY VEHICLES.

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 et seq.) is amended by adding at the end the following:

"PART K—REDUCING TRUCK IDLING

"SEC. 400AAA. REDUCING TRUCK IDLING.

''(a) STUDY.—Not later than 18 months after the date of enactment of this section, the Secretary shall, in consultation with the Secretary of Transportation, commence a study to analyze the potential fuel savings resulting from long duration idling of main drive engines in heavy-duty vehicles.

''(b) REGULATIONS.—Upon completion of the study under subsection (a), the Secretary may issue regulations requiring the installation of idling reduction systems on all newly manufactured heavy-duty vehicles.

''(c) DEFINITIONS.—As used in this section:

''(1) The term 'heavy-duty vehicle' means a vehicle that has a gross vehicle weight rating

greater than 8,500 pounds and is powered by a diesel engine.

''(2) The term 'idling reduction system' means a device or system of devices used to reduce long duration idling of a diesel engine in a vehicle.

''(3) The term 'long duration idling' means the operation of a main drive engine of a heavy-duty vehicle for a period of more than 15 consecutive minutes when the main drive engine is not engaged in gear, except that such term does not include idling as a result of traffic congestion or other impediments to the movement of a heavy-duty vehicle.

''(4) The term 'vehicle' has the meaning given such term in section 4 of title 1, United States Code.''.

SEC. 823. CONSERVE BY BICYCLING PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish a Conserve By Bicycling pilot program that shall provide for up to 10 geographically dispersed projects to encourage the use of bicycles in place of motor vehicles. Such projects shall use education and marketing to convert motor vehicle trips to bike trips, document project results and energy savings, and facilitate partnerships among entities in the fields of transportation, law enforcement, education, public health, environment, or energy. At least 20 percent of the cost of each project shall be provided from State or local sources. Not later than 2 years after implementation of the projects, the Secretary of Transportation shall submit a report to Congress on the results of the pilot program.

(b) NATIONAL ACADEMY STUDY.—The Secretary of Transportation shall contract with the National Academy of Sciences to conduct a study on the feasibility and benefits of converting motor vehicle trips to bicycle trips and to issue a report, not later than 2 years after enactment of this Act, on the findings of such study.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of' Transportation $5,500,000, to remain available until expended, to carry out the pilot program and study pursuant to this section.

SEC. 824. FUEL CELL VEHICLE PROGRAM.

Not later than 1 year from date of enactment of this section, the Secretary shall develop a program with timetables for developing technologies to enable at least 100,000 hydrogen-fueled fuel cell vehicles to be available for sale in the United States by 2010 and at least 2.5 million of such vehicles to be available by 2020 and annually thereafter. The program shall also include timetables for development of technologies to provide 50 million gasoline equivalent gallons of hydrogen for sale in fueling stations in the United States by 2010 and at least 2.5 billion gasoline equivalent gallons by 2020 and annually thereafter. The Secretary shall annually include a review of the progress toward meeting the vehicle sales of Energy budget.

Subtitle C—Federal Reformulated Fuels

SEC. 831. SHORT TITLE.

This subtitle may be cited as the ''Federal Reformulated Fuels Act of 2003''.

SEC. 832. LEAKING UNDERGROUND STORAGE TANKS.

(a) USE OF LUST FUNDS FOR REMEDIATION OF CONTAMINATION FROM ETHER FUEL ADDITIVES.—Section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)) is amended—

(1) in paragraph (7)(A)—

(A) by striking ''paragraphs (1) and (2) of this subsection'' and inserting ''paragraphs (1), (2), and (12)''; and

(B) by inserting ''and section 9010'' before ''if''; and

(2) by adding at the end the following:

''(12) REMEDIATION OF CONTAMINATION FROM ETHER FUEL ADDITIVES.—

''(A) IN GENERAL.—The Administrator and the States may use funds made available under section 9013(1) to carry out corrective actions with respect to a release of methyl tertiary butyl ether or other ether fuel additive that presents a threat to human health, welfare, or the environment.

''(B) APPLICABLE AUTHORITY.—Subparagraph (A) shall be carried out—

''(i) in accordance with paragraph (2), except that a release with respect to which a corrective action is carried out under subparagraph (A) shall not be required to be from an underground storage tank; and

''(ii) in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).''.

(b) RELEASE PREVENTION AND COMPLIANCE.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by striking section 9010 and inserting the following:

''SEC. 9010. RELEASE PREVENTION AND COMPLIANCE.

''Funds made available under section 9013(2) from the Leaking Underground Storage Tank Trust Fund may be used for conducting inspections, or for issuing orders or bringing actions under this subtitle—

''(1) by a State (pursuant to section 9003(h)(7)) acting under—

''(A) a program approved under section 9004; or

''(B) State requirements regulating underground storage tanks that are similar or identical to this subtitle, as determined by the Administrator; and

''(2) by the Administrator, acting under this subtitle or a State program approved under section 9004.

''SEC. 9011. BEDROCK BIOREMEDIATION.

''The Administrator shall establish, at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) with established expertise in bioremediation of contaminated bedrock aquifers, a resource center—

''(1) to conduct research concerning bioremediation of methyl tertiary butyl ether in contaminated underground aquifers, including contaminated bedrock; and

''(2) to provide for States a technical assistance clearinghouse for information concerning innovative technologies for bioremediation described in paragraph (1).

''SEC. 9012. SOIL REMEDIATION.

''The Administrator may establish a program to conduct research concerning remediation of methyl tertiary butyl ether contamination of soil, including granitic or volcanic soil.

''SEC. 9013. AUTHORIZATION OF APPROPRIATIONS.

''In addition to amounts made available under section 2007(f), there are authorized to be appropriated from the Leaking Underground Storage Tank Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986—

''(1) to carry out section 9003(h)(12), $200,000,000 for fiscal year 2003, to remain available until expended;

''(2) to carry out section 9010—

''(A) $50,000,000 for fiscal year 2003; and

''(B) $30,000,000 for each of fiscal years 2004 through 2008;

''(3) to carry out section 9011—

''(A) $500,000 for fiscal year 2003; and

''(B) $300,000 for each of fiscal years 2004 through 2008; and

''(4) to carry out section 9012—

''(A) $100,000 for fiscal year 2003; and

''(B) $50,000 for each of fiscal years 2004 through 2008.

(c) TECHNICAL AMENDMENTS.—(1) Section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by striking the item relating to section 9010 and inserting the following:

''Sec. 9010. Release prevention and compliance.
''Sec. 9011. Bedrock bioremediation.
''Sec. 9012. Soil remediation.
''Sec. 9013. Authorization of appropriations.''.

(2) Section 9001(3)(A) of the Solid Waste Disposal Act (42 U.S.C. 6991(3)(A)) is amended by striking ''sustances'' and inserting ''substances''.

(3) Section 9003(f)(1) of the Solid Waste Disposal Act (42 U.S.C. 6991b(f)(1)) is amended by striking ''subsection (c) and (d) of this section'' and inserting ''subsections (c) and (d)''.

(4) Section 9004(a) of the Solid Waste Disposal Act (42 U.S.C. 6991c(a)) is amended in the second sentence by striking ''referred to'' and all that follows and inserting ''referred to in subparagraph (A) or (B), or both, of section 9001(2).''.

(5) Section 9005 of the Solid Waste Disposal Act (42 U.S.C. 6991d) is amended—

(A) in subsection (a), by striking ''study taking'' and inserting ''study, taking'';

(B) in subsection (b)(1), by striking ''relevent'' and inserting ''relevant''; and

(C) in subsection (b)(4), by striking ''Evironmental'' and inserting ''Environmental''.

SEC. 833. AUTHORITY FOR WATER QUALITY PROTECTION FROM FUELS.

(a) FINDINGS.—Congress finds that—

(1) since 1979, methyl tertiary butyl ether (referred to in this section as ''MTBE'') has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

(2) Public Law 101–549 (commonly known as the ''Clean Air Act Amendments of 1990'') (42 U.S.C. 7401 et seq.) established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight;

(3) at the time of the adoption of the fuel oxygen standard, Congress was aware that significant use of MTBE could result from the adoption of that standard, and that the use of MTBE would likely be important to the cost-effective implementation of that program;

(4) Congress is aware that gasoline and its component additives have leaked from storage tanks, with consequences for water quality;

(5) the fuel industry responded to the fuel oxygenate standard established by Public Law 101–549 by making substantial investments in—

(A) MTBE production capacity; and

(B) systems to deliver MTBE-containing gasoline to the marketplace;

(6) when leaked or spilled into the environment, MTBE may cause serious problems of drinking water quality;

(7) in recent years, MTBE has been detected in water sources throughout the United States;

(8) MTBE can be detected by smell and taste at low concentrations;

(9) while small quantities of MTBE can render water supplies unpalatable, the precise human health effects of MTBE consumption at low levels are yet unknown;

(10) in the report entitled ''Achieving Clean Air and Clean Water: The Report of the Blue Ribbon Panel on Oxygenates in Gasoline'' and dated September 1999, Congress was urged—

(A) to eliminate the fuel oxygenate standard;

(B) to greatly reduce use of MTBE; and

(C) to maintain the environmental performance of reformulated gasoline;

(11) Congress has—

(A) reconsidered the relative value of MTBE in gasoline; and

(B) decided to eliminate use of MTBE as a fuel additive;

(12) the timeline for elimination of use of MTBE as a fuel additive must be established in a manner that achieves an appropriate balance among the goals of—

(A) environmental protection;

(B) adequate energy supply; and

(C) reasonable fuel prices; and

(13) it is appropriate for Congress to provide some limited transition assistance—

(A) to merchant producers of MTBE who produced MTBE in response to a market created by

the oxygenate requirement contained in the Clean Air Act; and

(B) for the purpose of mitigating any fuel supply problems that may result from elimination of a widely-used fuel additive.

(b) PURPOSES.—The purposes of this section are—

(1) to eliminate use of MTBE as a fuel oxygenate; and

(2) to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.

(c) AUTHORITY FOR WATER QUALITY PROTECTION FROM FUELS.—Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended—

(1) in paragraph (1)(A)—

(A) by inserting ''fuel or fuel additive or'' after ''Administrator any''; and

(B) by striking ''air pollution which'' and inserting ''air pollution, or water pollution, that'';

(2) in paragraph (4)(B), by inserting ''or water quality protection,'' after ''emission control,''; and

(3) by adding at the end the following:

''(5) PROHIBITION ON USE OF MTBE.—

''(A) IN GENERAL.—Subject to subparagraph (E), not later than 4 years after the date of enactment of this paragraph, the use of methyl tertiary butyl ether in motor vehicle fuel in any State other than a State described in subparagraph (C) is prohibited.

''(B) REGULATIONS.—The Administrator shall promulgate regulations to effect the prohibition in subparagraph (A).

''(C) STATES THAT AUTHORIZE USE.—A State described in this subparagraph is a State that submits to the Administrator a notice that the State authorizes use of methyl tertiary butyl ether in motor vehicle fuel sold or used in the State.

''(D) PUBLICATION OF NOTICE.—The Administrator shall publish in the Federal Register each notice submitted by a State under subparagraph (C).

''(E) TRACE QUANTITIES.—In carrying out subparagraph (A), the Administrator may allow trace quantities of methyl tertiary butyl ether, not to exceed 0.5 percent by volume, to be present in motor vehicle fuel in cases that the Administrator determines to be appropriate.

''(6) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

''(A) IN GENERAL.—

''(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of iso-octane and alkylates.

''(ii) DETERMINATION.—The Administrator, in consultation with the Secretary of Energy, may determine that transition assistance for the production of iso-octane and alkylates is inconsistent with the provisions of subparagraph (B) and, on that basis, may deny applications for grants authorized by this provision.

''(B) FURTHER GRANTS.—The Secretary of Energy, in consultation with the Administrator, may also further make grants to merchant producers of MTBE in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of such other fuel additives that, consistent with 211(c)—

''(i) unless the Administrator determines that such fuel additives may reasonably be anticipated to endanger public health or the environment;

''(ii) have been registered and have been tested or are being tested in accordance with the requirements of this section; and

''(iii) will contribute to replacing gasoline volumes lost as a result of paragraph (5).

''(C) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this paragraph if the production facility—

''(i) is located in the United States; and

''(ii) produced methyl tertiary butyl ether for consumption in nonattainment areas during the period—

''(I) beginning on the date of enactment of this paragraph; and

''(II) ending on the effective date of the prohibition on the use of methyl tertiary butyl ether under paragraph (5).

''(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $250,000,000 for each of fiscal years 2003 through 2005.''.

(d) NO EFFECT ON LAW CONCERNING STATE AUTHORITY.—The amendments made by subsection (c) have no effect on the law in effect on the day before the date of enactment of this Act regarding the authority of States to limit the use of methyl tertiary butyl ether in motor vehicle fuel.

SEC. 834. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

(a) ELIMINATION.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended—

(A) in paragraph (2)—

(i) in the second sentence of subparagraph (A), by striking ''(including the oxygen content requirement contained in subparagraph (B))'';

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(B) in paragraph (3)(A), by striking clause (v);

(C) in paragraph (7)—

(i) in subparagraph (A)—

(I) by striking clause (i); and

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(ii) in subparagraph (C)—

(I) by striking clause (ii); and

(II) by redesignating clause (iii) as clause (ii); and

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect 270 days after the date of enactment of this Act, except that such amendments shall take effect upon enactment in any State that has received a waiver under section 209(b) of the Clean Air Act.

(b) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended—

(1) by striking ''Within 1 year after the enactment of the Clean Air Act Amendments of 1990,'' and inserting the following:

''(A) IN GENERAL.—Not later than November 15, 1991,''; and

(2) by adding at the end the following:

''(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

''(i) DEFINITIONS.—In this subparagraph the term 'PADD' means a Petroleum Administration for Defense District.

''(ii) REGULATIONS REGARDING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph, the Administrator shall establish, for each refinery or importer (other than a refinery or importer in a State that has received a waiver under section 209(b) with regard to gasoline produced for use in that state), standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refinery or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000, determined on the basis of data collected by the Administrator with respect to the refinery or importer.

(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

''(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refinery or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refinery or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000.

''(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refinery or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

''(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

''(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

''(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

''(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 1999 and 2000; and

''(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

''(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 1999 and 2000, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

''(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

''(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refinery or importer shall meet the standards applicable under clause (iii) not later than April 1 of the year following the report in subclause (II) and for subsequent years.

''(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2004, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).''.

(c) CONSOLIDATION IN REFORMULATED GASOLINE REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Administrator shall revise the reformulated gasoline regulations under subpart D of part 80 of title 40, Code of Federal Regulations, to consolidate the regulations applicable to VOC-Control Regions 1 and 2 under section 80.41 of that title by eliminating the less stringent requirements applicable to gasoline designated for VOC-Control Region 2 and instead applying the more stringent requirements applicable to gasoline designated for VOC-Control Region 1.

(d) SAVINGS CLAUSE.—Nothing in this section is intended to affect or prejudice any legal claims or actions with respect to regulations promulgated by the Administrator prior to enactment of this Act regarding emissions of toxic air pollutants from motor vehicles.

(e) DETERMINATION REGARDING A STATE PETITION.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended by inserting after paragraph (10) the following:

''(11) DETERMINATION REGARDING A STATE PETITION.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section, not less than 30 days after enactment of this paragraph the Administrator must determine the adequacy of any petition received from a Governor of a State to exempt gasoline sold in that State from the requirements of paragraph (2)(B).

''(B) APPROVAL.—If the determination in (A) is not made within thirty days of enactment of this paragraph, the petition shall be deemed approved.''.

SEC. 835. PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS OF FUELS AND FUEL ADDITIVES.

Section 211(b) of the Clean Air Act (42 U.S.C. 7545(b)) is amended—

(1) in paragraph (2)—

(A) by striking ''may also'' and inserting ''shall, on a regular basis,''; and

(B) by striking subparagraph (A) and inserting the following:

''(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and''; and

(2) by adding at the end the following:

''(4) STUDY ON CERTAIN FUEL ADDITIVES AND BLENDSTOCKS.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of this paragraph, the Administrator shall—

''(i) conduct a study on the effects on public health, air quality, and water resources of increased use of, and the feasibility of using as substitutes for methyl tertiary butyl ether in gasoline—

''(I) ethyl tertiary butyl ether;

''(II) tertiary amyl methyl ether;

''(III) di-isopropyl ether;

''(IV) tertiary butyl alcohol;

''(V) other ethers and heavy alcohols, as determined by then Administrator;

''(VI) ethanol;

''(VII) iso-octane; and

''(VIII) alkylates; and

''(ii) conduct a study on the effects on public health, air quality, and water resources of the adjustment for ethanol-blended reformulated gasoline to the VOC performance requirements otherwise applicable under sections 211(k)(1) and 211(k)(3) of the Clean Air Act.

''(iii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing the results of these studies.

''(B) CONTRACTS FOR STUDY.—In carrying out this paragraph, the Administrator may enter into one or more contracts with nongovernmental entities including but not limited to National Energy Laboratories and institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).''.

SEC. 836. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) (as amended by section 820(a)) is amended by inserting after subsection (o) the following:

''(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

''(1) ANTI-BACKSLIDING ANALYSIS.—

''(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this paragraph, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by the Federal Reformulated Fuels Act of 2003.

''(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

''(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2005.''.

SEC. 837. ADDITIONAL OPT-IN AREAS UNDER REFORMULATED GASOLINE PROGRAM.

Section 211(k)(6) of the Clean Air Act (42 U.S.C. 7545(k)(6)) is amended—

(1) by striking ''(6) OPT-IN AREAS.—(A) Upon'' and inserting the following:

''(6) OPT-IN AREAS.—

''(A) CLASSIFIED AREAS.—

''(i) IN GENERAL.—Upon'';

(2) in subparagraph (B), by striking ''(B) If'' and inserting the following:

''(ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO PRODUCE REFORMULATED GASOLINE.—If'';

(3) in subparagraph (A)(ii) (as redesignated by paragraph (2))—

(A) in the first sentence, by striking ''subparagraph (A)'' and inserting ''clause (i)''; and

(B) in the second sentence, by striking ''this paragraph'' and inserting ''this subparagraph''; and

(4) by adding at the end the following:

''(B) OZONE TRANSPORT REGION.—

''(i) APPLICATION OF PROHIBITION.—

''(I) IN GENERAL.—In addition to the provisions of subparagraph (A), upon the application of the Governor of a State in the ozone transport region established by section 184(a), the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibition specified in paragraph (5) to any area in the State (other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of title I) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

''(II) PUBLICATION OF APPLICATION.—As soon as practicable after the date of receipt of an application under subclause (I), the Administrator shall publish the application in the Federal Register.

''(ii) PERIOD OF APPLICABILITY.—Under clause (i), the prohibition specified in paragraph (5) shall apply in a State—

''(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

''(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

''(iii) EXTENSION OF COMMENCEMENT DATE BASED ON INSUFFICIENT CAPACITY.—

''(I) IN GENERAL.—If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

''(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

''(bb) may renew the extension under item (aa) for two additional periods, each of which shall not exceed 1 year.

''(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.''.

SEC. 838. FEDERAL ENFORCEMENT OF STATE FUELS REQUIREMENTS.

Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended—

(1) by striking ''(C) A State'' and inserting the following:

''(C) AUTHORITY OF STATE TO CONTROL FUELS AND FUEL ADDITIVES FOR REASONS OF NECESSITY.—

''(i) IN GENERAL.—A State''; and

(2) by adding at the end the following:

''(ii) ENFORCEMENT BY THE ADMINISTRATOR.—In any case in which a State prescribes and enforces a control or prohibition under clause (i), the Administrator, at the request of the State, shall enforce the control or prohibition as if the control or prohibition had been adopted under the other provisions of this section.''.

SEC. 839. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall jointly conduct a study of Federal, State, and local requirements concerning motor vehicle fuels, including—

(A) requirements relating to reformulated gasoline, volatility (measured in Reid vapor pressure), oxygenated fuel, and diesel fuel; and

(B) other requirements that vary from State to State, region to region, or locality to locality.

(2) REQUIRED ELEMENTS.—The study shall assess—

(A) the effect of the variety of requirements described in paragraph (1) on the supply, quality, and price of motor vehicle fuels available to the consumer;

(B) the effect of the requirements described in paragraph (1) on achievement of—

(i) national, regional, and local air quality standards and goals; and

(ii) related environmental and public health protection standards and goals;

(C) the effect of Federal, State, and local motor vehicle fuel regulations, including multiple motor vehicle fuel requirements, on—

(i) domestic refineries;

(ii) the fuel distribution system; and

(iii) industry investment in new capacity;

(D) the effect of the requirements described in paragraph (1) on emissions from vehicles, refineries, and fuel handling facilities;

(E) the feasibility of developing national or regional motor vehicle fuel slates for the 48 contiguous States that, while protecting and improving air quality at the national, regional, and local levels, could—

(i) enhance flexibility in the fuel distribution infrastructure and improve fuel fungibility;

(ii) reduce price volatility and costs to consumers and producers;

(iii) provide increased liquidity to the gasoline market; and

(iv) enhance fuel quality, consistency, and supply; and

(F) the feasibility of providing incentives, and the need for the development of national standards necessary, to promote cleaner burning motor vehicle fuel.

(b) REPORT.—

(1) IN GENERAL.—Not later than June 1, 2006, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The report shall contain recommendations for legislative and administrative actions that may be taken—

(i) to improve air quality;

(ii) to reduce costs to consumers and producers; and

(iii) to increase supply liquidity.

(B) REQUIRED CONSIDERATIONS.—The recommendations under subparagraph (A) shall take into account the need to provide advance notice of required modifications to refinery and fuel distribution systems in order to ensure an adequate supply of motor vehicle fuel in all States.

(3) CONSULTATION.—In developing the report, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall consult with—

(A) the Governors of the States;
(B) automobile manufacturers;
(C) motor vehicle fuel producers and distributors; and
(D) the public.

SEC. 840. REVIEW OF FEDERAL PROCUREMENT INITIATIVES RELATING TO USE OF RECYCLED PRODUCTS AND FLEET AND TRANSPORTATION EFFICIENCY.

Not later than 180 days after the date of enactment of this Act, the Administrator of General Services shall submit to Congress a report that details efforts by each Federal agency to implement the procurement policies specified in Executive Order No. 13101 (63 Fed. Reg. 49643; relating to governmental use of recycled products) and Executive Order No. 13149 (65 Fed. Reg. 24607; relating to Federal fleet and transportation efficiency).

TITLE IX—ENERGY EFFICIENCY AND ASSISTANCE TO LOW INCOME CONSUMERS

Subtitle A—Low Income Assistance and State Energy Programs

SEC. 901. INCREASED FUNDING FOR LIHEAP, WEATHERIZATION ASSISTANCE, AND STATE ENERGY GRANTS.

(a) LIHEAP.—(1) Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended by striking the first sentence and inserting the following: ''There are authorized to be appropriated to carry out the provisions of this title (other than section 2607A), $3,400,000,000 for each of fiscal years 2003 through 2005.''.

(2) Section 2602(e) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(e)) is amended by striking ''$600,000,000'' and inserting ''$1,000,000,000''.

(3) Section 2609A(a) of the Low-Income Energy Assistance Act of 1981 (42 U.S.C. 8628a(a)) is amended by striking ''not more than $300,000'' and inserting: ''not more than $750,000''.

(b) WEATHERIZATION ASSISTANCE.—Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) is amended by striking ''for fiscal years 1999 through 2003 such sums as may be necessary.'' and inserting: ''$325,000,000 for fiscal year 2003, $400,000,000 for fiscal year 2004, and $500,000,000 for fiscal year 2005.''.

SEC. 902. STATE ENERGY PROGRAMS.

(a) STATE ENERGY CONSERVATION PLANS.—Section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322)) is amended by adding at the end the following:

''(g) The Secretary shall, at least once every 3 years, invite the Governor of each State to review and, if necessary, revise the energy conservation plan of the State submitted under subsection (b) or (e). Such reviews should consider the energy conservation plans of other States within the region, and identify opportunities and actions that may be carried out in pursuit of common energy conservation goals.''.

(b) STATE ENERGY CONSERVATION GOALS.—Section 364 of the Energy Policy and Conservation Act (42 U.S.C. 6324) is amended to read as follows:

''SEC. 364. Each State energy conservation plan with respect to which assistance is made available under this part on or after the date of enactment of the Energy Policy Act of 2003 shall contain a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy in the State concerned in calendar year 2010 as compared to calendar year 1990, and may contain interim goals.''.

(c) STATE ENERGY CONSERVATION GRANTS.—Section 365(f) of the Energy Policy and Conservation Act (42 U.S.C. 6325(f)) is amended by striking ''for fiscal years 1999 through 2003 such sums as may be necessary.'' and inserting: ''$100,000,000 for each of fiscal years 2003 and 2004; $125,000,000 for fiscal year 2005; and such sums as may be necessary for each fiscal year thereafter.''.

SEC. 903. ENERGY EFFICIENT SCHOOLS.

(a) ESTABLISHMENT.—There is established in the Department of Energy the High Performance Schools Program (in this section referred to as the ''Program'').

(b) GRANTS.—The Secretary of Energy may make grants to a State energy office—

(1) to assist school districts in the State to improve the energy efficiency of school buildings;
(2) to administer the Program; and
(3) to promote participation in the Program.

(c) GRANTS TO ASSIST SCHOOL DISTRICTS.—The Secretary shall condition grants under subsection (b)(1) on the State energy office using the grants to assist school districts that have demonstrated—

(1) a need for the grants to build additional school buildings to meet increasing elementary or secondary enrollments or to renovate existing school buildings; and

(2) a commitment to use the grant funds to develop high performance school buildings in accordance with a plan that the State energy office, in consultation with the State educational agency, has determined is feasible and appropriate to achieve the purposes for which the grant is made.

(d) GRANTS FOR ADMINISTRATION.—Grants under subsection (b)(2) shall be used to—

(1) evaluate compliance by school districts with requirements of this section;
(2) distribute information and materials to clearly define and promote the development of high performance school buildings for both new and existing facilities;
(3) organize and conduct programs for school board members, school personnel, architects, engineers, and others to advance the concepts of high performance school buildings;
(4) obtain technical services and assistance in planning and designing high performance school buildings; or
(5) collect and monitor data and information pertaining to the high performance school building projects.

(e) GRANTS TO PROMOTE PARTICIPATION.—Grants under subsection (b)(3) shall be used for promotional and marketing activities, including facilitating private and public financing, promoting the use of energy savings performance contracts, working with school administrations, students, and communities, and coordinating public benefit programs.

(f) SUPPLEMENTING GRANT FUNDS.—The State energy office shall encourage qualifying school districts to supplement funds awarded pursuant to this section with funds from other sources in the implementation of their plans.

(g) ALLOCATIONS.—Except as provided in subsection (h), funds appropriated to carry out this section shall be allocated as follows:

(1) 70 percent shall be used to make grants under subsection (b)(1).
(2) 15 percent shall be used to make grants under subsection (b)(2).
(3) 15 percent shall be used to make grants under subsection (b)(3).

(h) OTHER FUNDS.—The Secretary of Energy may retain an amount, not to exceed $300,000 per year, to assist State energy offices in coordinating and implementing the Program. Such funds may be used to develop reference materials to further define the principles and criteria to achieve high performance school buildings.

(i) AUTHORIZATION OF APPROPRIATIONS.—For grants under subsection (b) there are authorized to be appropriated—

(1) $200,000,000 for fiscal year 2003;
(2) $210,000,000 for fiscal year 2004;
(3) $220,000,000 for fiscal year 2005;
(4) $230,000,000 for fiscal year 2006; and
(5) such sums as may be necessary for fiscal year 2007 and each fiscal year thereafter through fiscal year 2012.

(j) DEFINITIONS.—For purposes of this section:

(1) HIGH PERFORMANCE SCHOOL BUILDING.—The term ''high performance school building'' means a school building that, in its design, construction, operation, and maintenance—

(A) maximizes use of renewable energy and energy-efficient technologies and systems;
(B) is cost-effective on a life-cycle basis;
(C) achieves either—
(i) the applicable Energy Star building energy performance ratings; or
(ii) energy consumption levels at least 30 percent below those of the most recent version of ASHRAE Standard 90.1;
(D) uses affordable, environmentally preferable, and durable materials;
(E) enhances indoor environmental quality;
(F) protects and conserves water; and
(G) optimizes site potential.

(2) RENEWABLE ENERGY.—The term ''renewable energy'' means energy produced by solar, wind, biomass, ocean, geothermal, or hydroelectric power.

(3) SCHOOL.—The term ''school'' means—

(A) an ''elementary school'' as that term is defined in section 14101(14) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(14)),
(B) a ''secondary school'' as that term is defined in section 14101(25) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(25)), or
(C) an elementary or secondary Indian school funded by the Bureau of Indian Affairs.

(4) STATE EDUCATIONAL AGENCY.—The term ''State educational agency'' has the same meaning given such term in section 14101(28) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(28)).

(5) STATE ENERGY OFFICE.—The term ''State energy office'' means the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322), or, if no such agency exists, a State agency designated by the Governor of the State.

SEC. 904. LOW INCOME COMMUNITY ENERGY EFFICIENCY PILOT PROGRAM.

(a) GRANTS.—The Secretary of Energy is authorized to make grants to units of local government, private, non-profit community development organizations, and Indian tribe economic development entities to improve energy efficiency, identify and develop alternative renewable and distributed energy supplies, and increase energy conservation in low income rural and urban communities.

(b) PURPOSE OF GRANTS.—The Secretary may make grants on a competitive basis for—

(1) investments that develop alternative renewable and distributed energy supplies;
(2) energy efficiency projects and energy conservation programs;
(3) studies and other activities that improve energy efficiency in low income rural and urban communities;
(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and
(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

(c) DEFINITION.—For purposes of this section, the term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section there are authorized to be appropriated to the Secretary of Energy an amount not to exceed $20,000,000 for fiscal year 2003 and each fiscal year thereafter through fiscal year 2005.

SEC. 905. ENERGY EFFICIENT APPLIANCE REBATE PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE STATE.—The term ''eligible State'' means a State that meets the requirements of subsection (b).

(2) ENERGY STAR PROGRAM.—The term ''Energy Star program'' means the program established by section 324A of the Energy Policy and Conservation Act.

(3) RESIDENTIAL ENERGY STAR PRODUCT.—The term ''residential Energy Star product'' means a product for a residence that is rated for energy efficiency under the Energy Star program.

(4) STATE ENERGY OFFICE.—The term ''State energy office'' means the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322).

(5) STATE PROGRAM.—The term ''State program'' means a State energy efficient appliance rebate program described in subsection (b)(1).

(b) ELIGIBLE STATES.—A State shall be eligible to receive an allocation under subsection (c) if the State—

(1) establishes (or has established) a State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products to replace used appliances of the same type;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Secretary may require; and

(3) provides assurances satisfactory to the Secretary that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

(c) AMOUNT OF ALLOCATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), for each fiscal year, the Secretary shall allocate to the State energy office of each eligible State to carry out subsection (d) an amount equal to the product obtained by multiplying the amount made available under subsection (e) for the fiscal year by the ratio that the population of the State in the most recent calendar year for which data are available bears to the total population of all eligible States in that calendar year.

(2) MINIMUM ALLOCATIONS.—For each fiscal year, the amounts allocated under this subsection shall be adjusted proportionately so that no eligible State is allocated a sum that is less than an amount determined by the Secretary.

(d) USE OF ALLOCATED FUNDS.—The allocation to a State energy office under subsection (c) may be used to pay up to 50 percent of the cost of establishing and carrying out a State program.

(e) ISSUANCE OF REBATES.—Rebates may be provided to residential consumers that meet the requirements of the State program. The amount of a rebate shall be determined by the State energy office, taking into consideration—

(1) the amount of the allocation to the State energy office under subsection (c);

(2) the amount of any Federal or State tax incentive available for the purchase of the residential Energy Star product; and

(3) the difference between the cost of the residential Energy Star product and the cost of an appliance that is not a residential Energy Star product, but is of the same type as, and is the nearest capacity, performance, and other relevant characteristics (as determined by the State energy office) to the residential Energy Star product.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for fiscal year 2003 through fiscal year 2012.

Subtitle B—Federal Energy Efficiency

SEC. 911. ENERGY MANAGEMENT REQUIREMENTS.

(a) ENERGY REDUCTION GOALS.—Section 543(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)) is amended to read as follows:

''(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2002 through 2011 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2000, by the percentage specified in the following table:

''Fiscal Year	Percentage reduction
2002	2
2003	4
2004	6
2005	8
2006	10
2007	12
2008	14
2009	16
2010	18
2011	20.''.

(b) REVIEW AND REVISION OF ENERGY PERFORMANCE REQUIREMENT.—Section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)) is further amended by adding at the end the following:

''(3) Not later than December 31, 2010, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for calendar years 2012 through 2021.''.

(c) EXCLUSIONS.—Section 543(c)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(1)) is amended to read as follows:

''(1)(A) An agency may exclude, from the energy performance requirement for a calendar year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—

''(i) compliance with those requirements would be impracticable;

''(ii) the agency has completed and submitted all federally required energy management reports;

''(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executives Orders, and other Federal law; and

''(iv) the agency has implemented all practicable, life-cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

''(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

''(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

''(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.''.

(d) REVIEW BY SECRETARY.—Section 543(c)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(2)) is amended—

(1) by striking ''impracticability standards'' and inserting ''standards for exclusion''; and

(2) by striking ''a finding of impracticability'' and inserting ''the exclusion''.

(e) CRITERIA.—Section 543(c) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)) is further amended by adding at the end the following:

''(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).''.

(f) REPORTS.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in the subsection heading, by inserting ''THE PRESIDENT AND'' before ''CONGRESS''; and

(2) by inserting ''President and'' before ''Congress''.

(g) CONFORMING AMENDMENT.—Section 550(d) of the National Energy Conservation Policy Act (42 U.S.C. 8258b(d)) is amended in the second sentence by striking ''the 20 percent reduction goal established under section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)).'' and inserting ''each of the energy reduction goals established under section 543(a).''.

SEC. 912. ENERGY USE MEASUREMENT AND ACCOUNTABILITY.

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is further amended by adding at the end the following:

''(e) METERING OF ENERGY USE.—

''(1) DEADLINE.—By October 1, 2004, all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered in accordance with guidelines established by the Secretary under paragraph (2). Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.

''(2) GUIDELINES.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration and representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, national laboratories, universities and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).

''(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

''(i) take into consideration—

''(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

''(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

''(III) the measurement and verification protocols of the Department of Energy;

''(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

''(iii) establish one or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

''(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimus quantity of energy use of a Federal building, industrial process, or structure.

''(3) PLAN.—No later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.''.

SEC. 913. FEDERAL BUILDING PERFORMANCE STANDARDS.

(a) REVISED STANDARDS.—Section 305(a) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)) is amended—

(1) in paragraph (2)(A), by striking ''CABO Model Energy Code, 1992'' and inserting ''the 2000 International Energy Conservation Code''; and

(2) by adding at the end the following:

''(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the

Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that, if cost-effective—

''(i) new commercial buildings and multifamily high rise residential buildings be constructed so as to achieve the applicable Energy Star building energy performance ratings or energy consumption levels at least 30 percent below those of the most recent ASHRAE Standard 90.1, whichever results in the greater increase in energy efficiency;

''(ii) new residential buildings (other than those described in clause (i)) be constructed so as to achieve the applicable Energy Star building energy performance ratings or achieve energy consumption levels at least 30 percent below the requirements of the most recent version of the International Energy Conservation Code, whichever results in the greater increase in energy efficiency; and

''(iii) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings.

''(B) ADDITIONAL REVISIONS.—Not later than 1 year after the date of approval of amendments to ASHRAE Standard 90.1 or the 2000 International Energy Conservation Code, the Secretary of Energy shall determine, based on the cost-effectiveness of the requirements under the amendments, whether the revised standards established under this paragraph should be updated to reflect the amendments.

''(C) STATEMENT ON COMPLIANCE OF NEW BUILDINGS.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include—

''(i) a list of all new Federal buildings of the Federal agency; and

''(ii) a statement concerning whether the Federal buildings meet or exceed the revised standards established under this paragraph, including a monitoring and commissioning report that is in compliance with the measurement and verification protocols of the Department of Energy.

''(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this paragraph and to implement the revised standards established under this paragraph.''.

(b) ENERGY LABELING PROGRAM.—Section 305(a) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)) is further amended by adding at the end the following:

''(e) ENERGY LABELING PROGRAM.—The Secretary of Energy, in cooperation with the Administrator of the Environmental Protection Agency, shall develop an energy labeling program for new Federal buildings that exceed the revised standards established under subsection (a)(3) by 15 percent or more.''.

SEC. 914. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

(a) REQUIREMENTS.—Part 3 of title V of the National Energy Conservation Policy Act is amended by adding at the end the following:

''SEC. 552. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

''(a) DEFINITIONS.—In this section:

''(1) ENERGY STAR PRODUCT.—The term 'Energy Star product' means a product that is rated for energy efficiency under an Energy Star program.

''(2) ENERGY STAR PROGRAM.—The term 'Energy Star program' means the program established by section 324A of the Energy Policy and Conservation Act.

''(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

''(4) FEMP DESIGNATED PRODUCT.—The term 'FEMP designated product' means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

''(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

''(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

''(A) an Energy Star product; or

''(B) a FEMP designated product.

''(2) EXCEPTIONS.—The head of an executive agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if—

''(A) an Energy Star product or FEMP designated product is not cost effective over the life cycle of the product; or

''(B) no Energy Star product or FEMP designated product is reasonably available that meets the requirements of the executive agency.

''(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

''(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the National Energy Conservation Policy Act (42 U.S.C. 8201 note) is amended by inserting after the item relating to section 551 the following:

''Sec. 552. Federal Government procurement of energy efficient products.''

(c) REGULATIONS.—Not later than 180 days after the effective date specified in subsection (f), the Secretary of Energy shall issue guidelines to carry out section 552 of the National Energy Conservation Policy Act (as added by subsection (a)).

(d) DESIGNATION OF ENERGY STAR PRODUCTS.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall expedite the process of designating products as Energy Star products (as defined in section 552 of the National Energy Conservation Policy Act (as added by subsection (a)).

(e) DESIGNATION OF ELECTRIC MOTORS.—In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard within 120 days of the enactment of this paragraph, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

(f) EFFECTIVE DATE.—Subsection (a) and the amendment made by that subsection take effect on the date that is 180 days after the date of enactment of this Act.

SEC. 915. REPEAL OF ENERGY SAVINGS PERFORMANCE CONTRACT SUNSET.

Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

SEC. 916. ENERGY SAVINGS PERFORMANCE CONTRACT DEFINITIONS.

(a) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

''(2) The term 'energy savings' means a reduction in the cost of energy or water, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

''(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

''(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

''(C) the increased efficient use of existing water sources.''.

(b) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

''(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations.''.

(c) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

''(4) The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

''(B) a water conservation measure that improves water efficiency, is life cycle cost effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities or other related activities, not at a Federal hydroelectric facility.''.

SEC. 917. REVIEW OF ENERGY SAVINGS PERFORMANCE CONTRACT PROGRAM.

Within 180 days after the date of the enactment of this Act, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, and energy efficiency services covered. The Secretary shall report these findings to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

SEC. 918. FEDERAL ENERGY BANK.

Part 3 of title V of the National Energy Conservation Policy Act is amended by adding at the end the following:

''SEC. 553. FEDERAL ENERGY BANK.

''(a) DEFINITIONS.—In this section:

''(1) BANK.—The term 'Bank' means the Federal Energy Bank established by subsection (b).

''(2) ENERGY OR WATER EFFICIENCY PROJECT.—The term 'energy or water efficiency project' means a project that assists a Federal agency in meeting or exceeding the energy or water efficiency requirements of—

''(A) this part;

''(B) title VIII;

''(C) subtitle F of title I of the Energy Policy Act of 1992 (42 U.S.C. 8262 et seq.); or

''(D) any applicable Executive order, including Executive Order No. 13123.

''(3) FEDERAL AGENCY.—The term 'Federal agency' means—

''(A) an Executive agency (as defined in section 105 of title 5, United States Code);

''(B) the United States Postal Service;

''(C) Congress and any other entity in the legislative branch; and

''(D) a Federal court and any other entity in the judicial branch.

''(b) ESTABLISHMENT OF BANK.—

''(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the 'Federal Energy Bank', consisting of—

''(A) such amounts as are deposited in the Bank under paragraph (2);

''(B) such amounts as are repaid to the Bank under subsection (c)(2)(D); and

''(C) any interest earned on investment of amounts in the Bank under paragraph (3).

''(2) DEPOSITS IN BANK.—

''(A) IN GENERAL.—Subject to the availability of appropriations and to subparagraph (B), the Secretary of the Treasury shall deposit in the Bank an amount equal to $250,000,000 in fiscal year 2003 and in each fiscal year thereafter.

''(B) MAXIMUM AMOUNT IN BANK.—Deposits under subparagraph (A) shall cease beginning with the fiscal year following the fiscal year in which the amounts in the Bank (including amounts on loan from the Bank) become equal to or exceed $1,000,000,000.

''(3) INVESTMENT OF AMOUNTS.—The Secretary of the Treasury shall invest such portion of the Bank as is not, in the judgment of the Secretary, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

''(c) LOANS FROM THE BANK.—

''(1) IN GENERAL.—The Secretary of the Treasury shall transfer from the Bank to the Secretary such amounts as are appropriated to carry out the loan program under paragraph (2).

''(2) LOAN PROGRAM.—

''(A) ESTABLISHMENT.—

''(i) IN GENERAL.—In accordance with subsection (d), the Secretary, in consultation with the Secretary of Defense, the Administrator of General Services, and the Director of the Office of Management and Budget, shall establish a program to make loans of amounts in the Bank to any Federal agency that submits an application satisfactory to the Secretary in order to pay the costs of a project described in subparagraph (C).

''(ii) COMMENCEMENT OF OPERATIONS.—The Secretary may begin—

''(I) accepting applications for loans from the Bank in fiscal year 2002; and

''(II) making loans from the Bank in fiscal year 2003.

''(B) ENERGY SAVINGS PERFORMANCE CONTRACTING FUNDING.—To the extent practicable, an agency shall not submit a project for which energy performance contracting funding is available and is acceptable to the Federal agency under title VIII.

''(C) PURPOSES OF LOAN.—

''(i) IN GENERAL.—A loan from the Bank may be used to pay—

''(I) the costs of an energy or water efficiency project, or a renewable or alternative energy project, for a new or existing Federal building (including selection and design of the project);

''(II) the costs of an energy metering plan and metering equipment installed pursuant to section 543(e) or for the purpose of verification of the energy savings under an energy savings performance contract under title VIII; or

''(III) at the time of contracting, the costs of cofunding of an energy savings performance contract (including a utility energy service agreement) in order to shorten the payback period of the project that is the subject of the energy savings performance contract.

''(ii) LIMITATION.—A Federal agency may use not more than 10 percent of the amount of a loan under subclause (I) or (II) of clause (i) to pay the costs of administration and proposal development (including data collection and energy surveys).

''(iii) RENEWABLE AND ALTERNATIVE ENERGY PROJECTS.—Not more than 25 percent of the amount on loan from the Bank at any time may be loaned for renewable energy and alternative energy projects (as defined by the Secretary in accordance with applicable law (including Executive Orders)).

''(D) REPAYMENTS.—

''(i) IN GENERAL.—Subject to clauses (ii) through (iv), a Federal agency shall repay to the Bank the principal amount of a loan plus interest at a rate determined by the President, in consultation with the Secretary and the Secretary of the Treasury.

''(ii) WAIVER OR REDUCTION OF INTEREST.—The Secretary may waive or reduce the rate of interest required to be paid under clause (i) if the Secretary determines that payment of interest by a Federal agency at the rate determined under that clause is not required to fund the operations of the Bank.

''(iii) DETERMINATION OF INTEREST RATE.—The interest rate determined under clause (i) shall be at a rate that is sufficient to ensure that, beginning not later than October 1, 2007, interest payments will be sufficient to fully fund the operations of the Bank.

''(iv) INSUFFICIENCY OF APPROPRIATIONS.—

''(I) REQUEST FOR APPROPRIATIONS.—As part of the budget request of the Federal agency for each fiscal year, the head of each Federal agency shall submit to the President a request for such amounts as are necessary to make such repayments as are expected to become due in the fiscal year under this subparagraph.

''(II) SUSPENSION OF REPAYMENT REQUIREMENT.—If, for any fiscal year, sufficient appropriations are not made available to a Federal agency to make repayments under this subparagraph, the Bank shall suspend the requirement of repayment under this subparagraph until such appropriations are made available.

''(E) FEDERAL AGENCY ENERGY BUDGETS.—Until a loan is repaid, a Federal agency budget submitted by the President to Congress for a fiscal year shall not be reduced by the value of energy savings accrued as a result of any energy conservation measure implemented using amounts from the Bank.

''(F) NO RESCISSION OR REPROGRAMMING.—A Federal agency shall not rescind or reprogram loan amounts made available from the Bank except as permitted under guidelines issued under subparagraph (G).

''(G) GUIDELINES.—The Secretary shall issue guidelines for implementation of the loan program under this paragraph, including selection criteria, maximum loan amounts, and loan repayment terms.

''(d) SELECTION CRITERIA.—

''(1) IN GENERAL.—The Secretary shall establish criteria for the selection of projects to be awarded loans in accordance with paragraph (2).

''(2) SELECTION CRITERIA.—

''(A) IN GENERAL.—The Secretary may make loans from the Bank only for a project that—

''(i) is technically feasible;

''(ii) is determined to be cost-effective using life cycle cost methods established by the Secretary;

''(iii) includes a measurement and management component, based on the measurement and verification protocols of the Department of Energy, to—

''(I) commission energy savings for new and existing Federal facilities;

''(II) monitor and improve energy efficiency management at existing Federal facilities; and

''(III) verify the energy savings under an energy savings performance contract under title VIII; and

''(iv)(I) in the case of a renewable energy or alternative energy project, has a simple payback period of not more than 15 years; and

''(II) in the case of any other project, has a simple payback period of not more than 10 years.

''(B) PRIORITY.—In selecting projects, the Secretary shall give priority to projects that—

''(i) are a component of a comprehensive energy management project for a Federal facility; and

''(ii) are designed to significantly reduce the energy use of the Federal facility.

''(e) REPORTS AND AUDITS.—

''(1) REPORTS TO THE SECRETARY.—Not later than 1 year after the completion of installation of a project that has a cost of more than $1,000,000, and annually thereafter, a Federal agency shall submit to the Secretary a report that—

''(A) states whether the project meets or fails to meet the energy savings projections for the project; and

''(B) for each project that fails to meet the energy savings projections, states the reasons for the failure and describes proposed remedies.

''(2) AUDITS.—The Secretary may audit, or require a Federal agency that receives a loan from the Bank to audit, any project financed with amounts from the Bank to assess the performance of the project.

''(3) REPORTS TO CONGRESS.—At the end of each fiscal year, the Secretary shall submit to Congress a report on the operations of the Bank, including a statement of—

''(A) the total receipts by the Bank;

''(B) the total amount of loans from the Bank to each Federal agency; and

''(C) the estimated cost and energy savings resulting from projects funded with loans from the Bank.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''.

SEC. 919. ENERGY AND WATER SAVING MEASURES IN CONGRESSIONAL BUILDINGS.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act is amended by adding at the end:

''SEC. 554. ENERGY AND WATER SAVINGS MEASURES IN CONGRESSIONAL BUILDINGS.

''(a) IN GENERAL.—The Architect of the Capitol—

''(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the ''plan'') for all facilities administered by the Congress (referred to in this section as 'congressional buildings') to meet the energy performance requirements for Federal buildings established under section 543(a)(1); and

''(2) shall submit the plan to Congress, not later than 180 days after the date of enactment of this section.

''(b) PLAN REQUIREMENTS.—The plan shall include—

''(1) a description of the life-cycle cost analysis used to determine the cost-effectiveness of proposed energy efficiency projects;

''(2) a schedule of energy surveys to ensure complete surveys of all congressional buildings every 5 years to determine the cost and payback period of energy and water conservation measures;

''(3) a strategy for installation of life cycle cost effective energy and water conservation measures;

''(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

''(5) information packages and 'how-to' guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

''(c) CONTRACTING AUTHORITY.—The Architect—

''(1) may contract with nongovernmental entities and use private sector capital to finance energy conservation projects and meet energy performance requirements; and

''(2) may use innovative contracting methods that will attract private sector funding for the installation of energy efficient and renewable energy technology, such as energy savings performance contracts described in title VIII.

''(d) CAPITOL VISITOR CENTER.—The Architect—

''(1) shall ensure that state-of-the-art energy efficiency and renewable energy technologies

are used in the construction and design of the Visitor Center; and

''(2) shall include in the Visitor Center an exhibit on the energy efficiency and renewable energy measures used in congressional buildings.

''(e) ANNUAL REPORT.—The Architect shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

''(1) energy expenditures and savings estimates for each facility;—

''(2) energy management and conservation projects; and

''(3) future priorities to ensure compliance with this section.''.

(b) REPEAL.—Section 310 of the Legislative Branch Appropriations Act, 1999 (40 U.S.C. 166i), is repealed.

SEC. 920. INCREASED USE OF RECOVERED MATERIAL IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) AGENCY HEAD.—The term ''agency head'' means—

(A) the Secretary of Transportation; and

(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(3) CEMENT OR CONCRETE PROJECT.—The term ''cement or concrete project'' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out in whole or in part using Federal funds.

(4) RECOVERED MATERIAL.—The term ''recovered material'' means—

(A) ground granulated blast furnace slag;

(B) coal combustion fly ash; and

(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered material under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) IMPLEMENTATION OF REQUIREMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this Act (including guidelines under section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6963)) that provide for the use of cement and concrete incorporating recovered material in cement or concrete projects.

(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered material in cement or concrete projects for which recovered materials historically have not been used or have been used only minimally.

(c) FULL IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Administrator and the Secretary of Transportation, in cooperation with the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and greenhouse gas emission reduction benefits attainable with substitution of recovered material in cement used in cement or concrete projects.

(2) MATTERS TO BE ADDRESSED.—The study shall—

(A) quantify the extent to which recovered materials are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and greenhouse gas emission reduction benefits associated with that substitution;

(B) identify all barriers in procurement requirements to fuller realization of energy savings and greenhouse gas emission reduction benefits, including barriers resulting from exceptions from current law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered material in types of cement or concrete projects for which recovered materials historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered material in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered material in those cement or concrete projects.

(3) REPORT.—Not later than 30 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Appropriations and Committee on Environment and Public Works of the Senate and the Committee on Appropriations and Committee on Energy and Commerce of the House of Representatives a report on the study.

(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Within 1 year of the release of the report in accordance with subsection (c)(3), the Administrator and each agency head shall take additional actions authorized under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered material in the construction and maintenance of cement or concrete projects, so as to—

(1) realize more fully the energy savings and greenhouse gas emission reduction benefits associated with increased substitution; and

(2) eliminate barriers identified under subsection (c).

(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962) (including the guidelines and specifications for implementing those requirements).

Subtitle C—Industrial Efficiency and Consumer Products

SEC. 921. VOLUNTARY COMMITMENTS TO REDUCE INDUSTRIAL ENERGY INTENSITY.

(a) VOLUNTARY AGREEMENTS.—The Secretary of Energy shall enter into voluntary agreements with one or more persons in industrial sectors that consume significant amounts of primary energy per unit of physical output to reduce the energy intensity of their production activities.

(b) GOAL.—Voluntary agreements under this section shall have a goal of reducing energy intensity by not less than 2.5 percent each year from 2002 through 2012.

(c) RECOGNITION.—The Secretary of Energy, in cooperation with the Administrator of the Environmental Protection Agency and other appropriate Federal agencies, shall develop mechanisms to recognize and publicize the achievements of participants in voluntary agreements under this section.

(d) DEFINITION.—In this section, the term ''energy intensity'' means the primary energy consumed per unit of physical output in an industrial process.

(e) TECHNICAL ASSISTANCE.—An entity that enters into an agreement under this section and continues to make a good faith effort to achieve the energy efficiency goals specified in the agreement shall be eligible to receive from the Secretary a grant or technical assistance as appropriate to assist in the achievement of those goals.

(f) REPORT.—Not later than June 30, 2008 and June 30, 2012, the Secretary shall submit to Congress a report that evaluates the success of the voluntary agreements, with independent verification of a sample of the energy savings estimates provided by participating firms.

SEC. 922. AUTHORITY TO SET STANDARDS FOR COMMERCIAL PRODUCTS.

Part B of title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 et seq.) is amended as follows:

(1) In the heading for such part, by inserting ''AND COMMERCIAL'' after ''CONSUMER''.

(2) In section 321(2), by inserting ''or commercial'' after ''consumer''.

(3) In paragraphs (4), (5), and (15) of section 321, by striking ''consumer'' each place it appears and inserting ''covered''.

(4) In section 322(a), by inserting ''or commercial'' after ''consumer'' the first place it appears in the material preceding paragraph (1).

(5) In section 322(b), by inserting ''or commercial'' after ''consumer'' each place it appears.

(6) In section 322 (b)(1)(B) and (b)(2)(A), by inserting ''or per-business in the case of a commercial product'' after ''per-household'' each place it appears.

(7) In section 322 (b)(2)(A), by inserting ''or businesses in the case of commercial products'' after ''households'' each place it appears.

(8) In section 322 (B)(2)(C)—

(A) by striking ''term'' and inserting ''terms''; and

(B) by inserting ''and 'business'' after '''household'''.

(9) In section 323 (b)(1) (B) by inserting ''or commercial'' after ''consumer''.

SEC. 923. ADDITIONAL DEFINITIONS.

Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended by adding at the end the following:

''(32) The term 'battery charger' means a device that charges batteries for consumer products.

''(33) The term 'commercial refrigerator, freezer and refrigerator-freezer' means a refrigerator, freezer or refrigerator-freezer that—

''(A) is not a consumer product regulated under this Act; and

''(B) incorporates most components involved in the vapor-compression cycle and the refrigerated compartment in a single package.

''(34) The term 'external power supply' means an external power supply circuit that is used to convert household electric current into either DC current or lower-voltage AC current to operate a consumer product.

''(35) The term 'illuminated exit sign' means a sign that—

''(A) is designed to be permanently fixed in place to identify an exit; and

''(B) consists of—

''(i) an electrically powered integral light source that illuminates the legend 'EXIT' and any directional indicators; and

''(ii) provides contrast between the legend, any directional indicators, and the background.

''(36)(A) Except as provided in subsection (B), the term 'low-voltage dry-type transformer' means a transformer that—

''(i) has an input voltage of 600 volts or less;

''(ii) is air-cooled;

''(iii) does not use oil as a coolant; and

''(iv) is rated for operation at a frequency of 60 Hertz.

''(B) The term 'low-voltage dry-type transformer' does not include—

''(i) transformers with multiple voltage taps, with the highest voltage tap equaling at least 20 percent more than the lowest voltage tap;

''(ii) transformers that are designed to be used in a special purpose application, such as transformers commonly known as drive transformers, rectifier transformers, autotransformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers; or

''(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because the transformer is designed for a special application and the application of standards to the transformer would not result in significant energy savings.

''(37) The term 'standby mode' means the lowest amount of electric power used by a household appliance when not performing its active functions, as defined on an individual product basis by the Secretary.

''(38) The term 'torchiere' means a portable electric lamp with a reflector bowl that directs light upward so as to give indirect illumination.

''(39) The term 'transformer' means a device consisting of two or more coils of insulated wire that transfers alternating current by electromagnetic induction from one coil to another to change the original voltage or current value.

''(40) The term 'unit heater' means a self-contained fan-type heater designed to be installed within the heated space, except that such term does not include a warm air furnace.

''(41) The term 'traffic signal module' means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation, that communicates movement messages to drivers through red, amber, and green colors.''.

SEC. 924. ADDITIONAL TEST PROCEDURES.

(a) EXIT SIGNS.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended by adding at the end the following:

''(9) Test procedures for illuminated exit signs shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for illuminated exit signs, as in effect on the date of enactment of this paragraph.

''(10) Test procedures for low voltage dry-type distribution transformers shall be based on the 'Standard Test Method for Measuring the Energy Consumption of Distribution Transformers' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998). The Secretary may review and revise this test procedure based on future revisions to such standard test method.

''(11) Test procedures for traffic signal modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.''.

(b) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is further amended by adding at the end the following:

''(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall within 24 months after the date of enactment of this subsection prescribe testing requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, commercial unit heaters, and commercial refrigerators, freezers and refrigerator-freezers. Such testing requirements shall be based on existing test procedures used in industry to the extent practical and reasonable. In the case of suspended ceiling fans, such test procedures shall include efficiency at both maximum output and at an output no more than 50 percent of the maximum output.''.

SEC. 925. ENERGY LABELING.

(a) RULEMAKING ON EFFECTIVENESS OF CONSUMER PRODUCT LABELING.—Paragraph (2) of section 324(a) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding at the end the following:

''(F) Not later than 3 months after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider the effectiveness of the current consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency and to consider changes to the labeling rules that would improve the effectiveness of consumer product labels. Such rulemaking shall be completed within 15 months of the date of enactment of this subparagraph.''.

(b) RULEMAKING ON LABELING FOR ADDITIONAL PRODUCTS.—Section 324(a) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)) is further amended by adding at the end the following:

''(5) The Secretary shall within 6 months after the date on which energy conservation standards are prescribed by the Secretary for covered products referred to in subsections (u) and (v) of section 325, and within 18 months of enactment of this paragraph for products referred to in subsections (w) through (y) of section 325, prescribe, by rule, labeling requirements for such products. Labeling requirements adopted under this paragraph shall take effect on the same date as the standards set pursuant to sections 325 (v) through (y).''.

SEC. 926. ENERGY STAR PROGRAM.

The Energy Policy and Conservation Act (42 U.S.C. 6201 and following) is amended by inserting after section 324 the following:

''ENERGY STAR PROGRAM

''SEC. 324A. There is established at the Department of Energy and the Environmental Protection Agency a program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through labeling of products and buildings that meet the highest energy efficiency standards. Responsibilities under the program shall be divided between the Department of Energy and the Environmental Protection Agency consistent with the terms of agreements between the two agencies. The Administrator and the Secretary shall—

''(1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for achieving energy efficiency and to reduce pollution;

''(2) work to enhance public awareness of the Energy Star label, including special outreach to small businesses;

''(3) preserve the integrity of the Energy Star label; and

''(4) solicit the comments of interested parties in establishing a new Energy Star product category or in revising a product category, and upon adoption of a new or revised product category provide an explanation of the decision that responds to significant public comments.''.

SEC. 927. ENERGY CONSERVATION STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS.

Section 325(d)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6295(d)) is amended by adding at the end the following:

''(C) REVISION OF STANDARDS.—Not later than 60 days after the date of enactment of this subparagraph, the Secretary shall amend the standards established under paragraph (1).''.

SEC. 928. ENERGY CONSERVATION STANDARDS FOR ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.

Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended by adding at the end the following:

''(u) STANDBY MODE ELECTRIC ENERGY CONSUMPTION.—

''(1) INITIAL RULEMAKING.—(A) The Secretary shall, within 18 months after the date of enactment of this subsection, prescribe by notice and comment, definitions of standby mode and test procedures for the standby mode power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing test procedures used for measuring energy consumption in standby mode and assess the current and projected future market for battery chargers and external power supplies. This assessment shall include estimates of the significance of potential energy savings from technical improvements to these products and suggested product classes for standards. Prior to the end of this time period, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for standby mode energy use for these products.

''(B) The Secretary shall, within 3 years after the date of enactment of this subsection, issue a final rule that determines whether energy conservation standards shall be promulgated for battery chargers and external power supplies or classes thereof. For each product class, any such standards shall be set at the lowest level of standby energy use that—

''(i) meets the criteria of subsections (o), (p), (q), (r), (s) and (t); and

''(ii) will result in significant overall annual energy savings, considering both standby mode and other operating modes.

''(2) DESIGNATION OF ADDITIONAL COVERED PRODUCTS.—(A) Not later than 180 days after the date of enactment of this subsection, the Secretary shall publish for public comment and public hearing a notice to determine whether any noncovered products should be designated as covered products for the purpose of instituting a rulemaking under this section to determine whether an energy conservation standard restricting standby mode energy consumption, should be promulgated; providing that any restriction on standby mode energy consumption shall be limited to major sources of such consumption.

''(B) In making the determinations pursuant to subparagraph (A) of whether to designate new covered products and institute rulemakings, the Secretary shall, among other relevant factors and in addition to the criteria in section 322(b), consider—

''(i) standby mode power consumption compared to overall product energy consumption; and

''(ii) the priority and energy savings potential of standards which may be promulgated under this subsection compared to other required rulemakings under this section and the available resources of the Department to conduct such rulemakings.

''(C) Not later than 1 year after the date of enactment of this subsection, the Secretary shall issue a determination of any new covered products for which he intends to institute rulemakings on standby mode pursuant to this section and he shall state the dates by which he intends to initiate those rulemakings.

''(3) REVIEW OF STANDBY ENERGY USE IN COVERED PRODUCTS.—In determining pursuant to section 323 whether test procedures and energy conservation standards pursuant to section 325 should be revised, the Secretary shall consider for covered products which are major sources of standby mode energy consumption whether to incorporate standby mode into such test procedures and energy conservation standards, taking into account, among other relevant factors, the criteria for non-covered products in subparagraph (B) of this subsection.

''(4) RULEMAKING FOR STANDBY MODE.—(A) Any rulemaking instituted under this subsection or for covered products under this section which restricts standby mode power consumption shall be subject to the criteria and procedures for issuing energy conservation standards set forth in section 325 and the criteria set forth in paragraph 2(B) of this subsection.

''(B) No standard can be proposed for new covered products or covered products in a standby mode unless the Secretary has promulgated applicable test procedures for each product pursuant to section 323.

''(C) The provisions of section 327 shall apply to new covered products which are subject to the rulemakings for standby mode after a final rule has been issued.

''(5) EFFECTIVE DATE.—Any standard promulgated under this subsection shall be applicable to products manufactured or imported 3 years after the date of promulgation.

''(6) VOLUNTARY PROGRAMS TO REDUCE STANDBY MODE ENERGY USE.—The Secretary and the Administrator shall collaborate and develop programs, including programs pursuant to section 324A and other voluntary industry agreements or codes of conduct, which are designed to reduce standby mode energy use.

''(v) SUSPENDED CEILING FANS, VENDING MACHINES, UNIT HEATERS, AND COMMERCIAL REFRIGERATORS, FREEZERS AND REFRIGERATOR-FREEZERS.—The Secretary shall within 24 months after the date on which testing requirements are prescribed by the Secretary pursuant to section 323(f), prescribe, by rule, energy conservation standards for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, unit heaters, and commercial refrigerators, freezers and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (l) and (m). Any standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing such standard.

''(w) ILLUMINATED EXIT SIGNS.—Illuminated exit signs manufactured on or after January 1, 2005 shall meet the Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency as in effect on the date of enactment of this subsection.

''(x) TORCHIERES.—Torchieres manufactured on or after January 1, 2005—

''(1) shall consume not more than 190 watts of power; and

''(2) shall not be capable of operating with lamps that total more than 190 watts.

''(y) LOW VOLTAGE DRY-TYPE TRANSFORMERS.—The efficiency of low voltage dry-type transformers manufactured on or after January 1, 2005 shall be the Class I Efficiency Levels for low voltage dry-type transformers specified in Table 4–2 of the 'Guide for Determining Energy Efficiency for Distribution Transformers' published by the National Electrical Manufacturers Association (NEMA TP–1–1996).

''(z) TRAFFIC SIGNAL MODULES.—Traffic signal modules manufactured on or after January 1, 2006 shall meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this paragraph, and shall be installed with compatible, electrically-connected signal control interface devices and conflict monitoring systems.''.

SEC. 929. CONSUMER EDUCATION ON ENERGY EFFICIENCY BENEFITS OF AIR CONDITIONING, HEATING, AND VENTILATION MAINTENANCE.

Section 337 of the Energy Policy and Conservation Act (42 U.S.C. 6307) is amended by adding at the end the following:

''(c) HVAC MAINTENANCE.—(1) For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, within 180 days of the date of enactment of this subsection, carry out a program to educate homeowners and small business owners concerning the energy savings resulting from properly conducted maintenance of air conditioning, heating, and ventilating systems.

''(2) The Secretary may carry out the program in cooperation with industry trade associations, industry members, and energy efficiency organizations.

''(d) SMALL BUSINESS EDUCATION AND ASSISTANCE.—The Administrator of the Small Business Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the existing Energy Star for Small Business Program, to assist small business to become more energy efficient, understand the cost savings obtainable through efficiencies, and identify financing options for energy efficiency upgrades. The Secretary and the Administrator shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Agency, and the Department of Agriculture.''.

SEC. 930. STUDY OF ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall contract with the National Academy of Sciences for a study, to be completed within 1 year of enactment of this Act, to examine whether the goals of energy efficiency standards are best served by measurement of energy consumed, and efficiency improvements, at the actual site of energy consumption, or through the full fuel cycle, beginning at the source of energy production. The Secretary shall submit the report to the Congress.

Subtitle D—Housing Efficiency

SEC. 931. CAPACITY BUILDING FOR ENERGY EFFICIENT, AFFORDABLE HOUSING.

Section 4(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note) is amended—

(1) in paragraph (1), by inserting before the semicolon at the end the following: '', including capabilities regarding the provision of energy efficient, affordable housing and residential energy conservation measures''; and

(2) in paragraph (2), by inserting before the semicolon the following: '', including such activities relating to the provision of energy efficient, affordable housing and residential energy conservation measures that benefit low-income families''.

SEC. 932. INCREASE OF CDBG PUBLIC SERVICES CAP FOR ENERGY CONSERVATION AND EFFICIENCY ACTIVITIES.

Section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(8)) is amended—

(1) by inserting ''or efficiency'' after ''energy conservation'';

(2) by striking '', and except that'' and inserting ''; except that''; and

(3) by inserting before the period at the end the following: ''; and except that each percentage limitation under this paragraph on the amount of assistance provided under this title that may be used for the provision of public services is hereby increased by 10 percent, but such percentage increase may be used only for the provision of public services concerning energy conservation or efficiency''.

SEC. 933. FHA MORTGAGE INSURANCE INCENTIVES FOR ENERGY EFFICIENT HOUSING.

(a) SINGLE FAMILY HOUSING MORTGAGE INSURANCE.—Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended, in the first undesignated paragraph beginning after subparagraph (B)(iii) (relating to solar energy systems)—

(1) by inserting ''or paragraph (10)''; and

(2) by striking ''20 percent'' and inserting ''30 percent''.

(b) MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 207(c) of the National Housing Act (12 U.S.C. 1713(c)) is amended, in the second undesignated paragraph beginning after paragraph (3) (relating to solar energy systems and residential energy conservation measures), by striking ''20 percent'' and inserting ''30 percent''.

(c) COOPERATIVE HOUSING MORTGAGE INSURANCE.—Section 213(p) of the National Housing Act (12 U.S.C. 1715e(p)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(d) REHABILITATION AND NEIGHBORHOOD CONSERVATION HOUSING MORTGAGE INSURANCE.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(e) LOW-INCOME MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 221(k) of the National Housing Act (12 U.S.C. 1715l(k)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(f) ELDERLY HOUSING MORTGAGE INSURANCE.—The proviso at the end of section 213(c)(2) of the National Housing Act (12 U.S.C. 1715v(c)(2)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(g) CONDOMINIUM HOUSING MORTGAGE INSURANCE.—Section 234(j) of the National Housing Act (12 U.S.C. 1715y(j)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

SEC. 934. PUBLIC HOUSING CAPITAL FUND.

Section 9(d)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437g(d)(1)) is amended—

(1) in subparagraph (I), by striking ''and'' at the end;

(2) in subparagraph (K), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(L) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate.''.

SEC. 935. GRANTS FOR ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

Section 251(b)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8231(1)) is amended—

(1) by striking ''financed with loans'' and inserting ''assisted'';

(2) by inserting after ''1959,'' the following: ''which are eligible multifamily housing projects (as such term is defined in section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) and are subject to a mortgage restructuring and rental assistance sufficiency plans under such Act,''; and

(3) by inserting after the period at the end of the first sentence the following new sentence: ''Such improvements may also include the installation of energy and water conserving fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation.''.

SEC. 936. NORTH AMERICAN DEVELOPMENT BANK.

Part 2 of subtitle D of title V of the North American Free Trade Agreement Implementation Act (22 U.S.C. 290m–290m–3) is amended by adding at the end the following:

''SEC. 545. SUPPORT FOR CERTAIN ENERGY POLICIES.

''Consistent with the focus of the Bank's Charter on environmental infrastructure projects, the Board members representing the United States should use their voice and vote to encourage the Bank to finance projects related to clean and efficient energy, including energy conservation, that prevent, control, or reduce environmental pollutants or contaminants.''.

SEC. 937. CAPITAL FUND.

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g), as amended by section 934, is amended—

(1) in subsection (d)(1)—

(A) in subparagraph (L), by striking the period at the end and inserting ''; and'';

(B) by redesignating subparagraph (L) as subparagraph (K); and

(C) by adding at the end the following:

''(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.''; and

(2) in subsection (e)(2)(C)—

(A) by striking ''The'' and inserting the following:

''(i) IN GENERAL.—The''; and

(B) by adding at the end the following:

''(ii) THIRD PARTY CONTRACTS.—Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident paid utilities, adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

''(iii) TERM OF CONTRACT.—The total term of a contract described in clause (i) shall be for not more than 20 years to allow longer payback periods for retrofits, including but not limited to windows, heating system replacements, wall insulation, site-based generations, and advanced energy savings technologies, including renewable energy generation.''.

SEC. 938. ENERGY-EFFICIENT APPLIANCES.

A public housing agency shall purchase energy-efficient appliances that are Energy Star products as defined in section 552 of the National Energy Policy and Conservation Act (as amended by this Act) when the purchase of energy-efficient appliances is cost-effective to the public housing agency.

SEC. 939. ENERGY EFFICIENCY STANDARDS.

Section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2002'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting a semi-colon; and

(iv) by adding at the end the following:

''(C) rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants, established under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), where such standards are determined to be cost effective by the Secretary of Housing and Urban Development; and

(B) in paragraph (2), by striking ''Council of American'' and all that follows through ''lifecycle cost basis'' and inserting ''2000 International Energy Conservation Code'';

(2) in subsection (b)—

(A) by striking ''the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2002''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2000 International Energy Conservation Code''; and

(3) in subsection (c)—

(A) in the heading, by striking ''MODEL ENERGY CODE'' and inserting ''THE INTERNATIONAL ENERGY CONSERVATION CODE''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2000 International Energy Conservation Code''.

SEC. 940. ENERGY STRATEGY FOR HUD.

(a) IN GENERAL.—The Secretary of Housing and Urban Development shall develop and implement an integrated strategy to reduce utility expenses through cost-effective energy conservation and efficiency measures, design and construction in public and assisted housing.

(b) ENERGY MANAGEMENT OFFICE.—The Secretary of Housing and Urban Development shall create an office at the Department of Housing and Urban Development for utility management, energy efficiency, and conservation, with responsibility for implementing the strategy developed under this section, including development of a centralized database that monitors public housing energy usage, and development of energy reduction goals and incentives for public housing agencies. The Secretary shall submit an annual report to Congress on the strategy.

Subtitle E—Rural and Remote Communities

SEC. 941. SHORT TITLE.

This subtitle may be cited as the ''Rural and Remote Community Fairness Act''.

SEC. 942. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) a modern infrastructure, including energy-efficient housing, electricity, telecommunications, bulk fuel, wastewater and potable water service, is a necessary ingredient of a modern society and development of a prosperous economy;

(2) the Nation's rural and remote communities face critical social, economic and environmental problems, arising in significant measure from the high cost of infrastructure development in sparsely populated and remote areas, that are not adequately addressed by existing Federal assistance programs;

(3) in the past, Federal assistance has been instrumental in establishing electric and other utility service in many developing regions of the Nation, and that Federal assistance continues to be appropriate to ensure that electric and other utility systems in rural areas conform with modern standards of safety, reliability, efficiency and environmental protection; and

(4) the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable rural and remote communities as social, economic and political entities.

(b) PURPOSE.—The purpose of this subtitle is the development and maintenance of viable rural and remote communities through the provision of efficient housing, and reasonably priced and environmentally sound energy, water, wastewater, and bulk fuel, telecommunications and utility services to those communities that do not have those services or who currently bear costs of those services that are significantly above the national average.

SEC. 943. DEFINITIONS.

As used in this subtitle:

(1) The term ''unit of general local government'' means any city, county, town, township, parish, village, borough (organized or unorganized) or other general purpose political subdivision of a State, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, the Virgin Islands, and American Samoa, a combination of such political subdivisions that is recognized by the Secretary; and the District of Columbia; or any other appropriate organization of citizens of a rural and remote community that the Secretary may identify.

(2) The term ''population'' means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(3) The term ''Native American group'' means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) or was considered an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

(4) The term ''Secretary'' means the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Secretary of the Interior or the Secretary of Energy, as appropriate.

(5) The term ''rural and remote community'' means a unit of local general government or Native American group which is served by an electric utility that has 10,000 or less customers with an average retail cost per kilowatt hour of electricity that is equal to or greater than 150 percent of the average retail cost per kilowatt hour of electricity for all consumers in the United States, as determined by data provided by the Energy Information Administration of the Department of Energy.

(6) The term ''alternative energy sources'' include nontraditional means of providing electrical energy, including, but not limited to, wind, solar, biomass, municipal solid waste, hydroelectric, geothermal and tidal power.

(7) The term ''average retail cost per kilowatt hour of electricity'' has the same meaning as ''average revenue per kilowatt hour of electricity'' as defined by the Energy Information Administration of the Department of Energy.

SEC. 944. AUTHORIZATION OF APPROPRIATIONS.

The Secretary is authorized to make grants to rural and remote communities to carry out activities in accordance with the provisions of this subtitle. For purposes of assistance under section 947, there are authorized to be appropriated $100,000,000 for each of fiscal years 2003 through 2009.

SEC. 945. STATEMENT OF ACTIVITIES AND REVIEW.

(a) STATEMENT OF OBJECTIVES AND PROJECTED USE.—Prior to the receipt in any fiscal year of a grant under section 947 by any rural and remote community, the grantee shall have prepared and submitted to the Secretary of the agency providing funding a final statement of rural and remote community development objectives and projected use of funds.

(b) PUBLIC NOTICE.—In order to permit public examination and appraisal of such statements, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the grantee shall in a timely manner—

(1) furnish citizens information concerning the amount of funds available for rural and remote community development activities and the range of activities that may be undertaken;

(2) publish a proposed statement in such manner to afford affected citizens an opportunity to examine its content and to submit comments on the proposed statement and on the community development performance of the grantee;

(3) provide citizens with reasonable access to records regarding the past use of funds received under section 947 by the grantee; and

(4) provide citizens with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under section 947 from one eligible activity to another.

The final statement shall be made available to the public, and a copy shall be furnished to the appropriate Secretary. Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same. Procedures required in this paragraph are for the preparation and submission of such statement.

(c) PERFORMANCE AND EVALUATION REPORT.—Each grantee shall submit to the appropriate Secretary, at a time determined by the Secretary, a performance and evaluation report, concerning the use of funds made available under section 947, together with an assessment by the grantee of the relationship of such use to the objectives identified in the grantee's statement under subsection (a) and to the requirements of subsection (b). The grantee's report shall indicate its programmatic accomplishments, the nature of and reasons for any changes in the grantee's program objectives, and indications of how the grantee would change its programs as a result of its experiences.

(d) RETENTION OF INCOME.—

(1) IN GENERAL.—Any rural and remote community may retain any program income that is realized from any grant made by the Secretary under section 947 if—

(A) such income was realized after the initial disbursement of the funds received by such unit of general local government under such section; and

(B) such unit of general local government has agreed that it will utilize the program income for eligible rural and remote community development activities in accordance with the provisions of this title.

(2) EXCEPTION.—The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the subsection creates an

unreasonable administrative burden on the rural and remote community.

SEC. 946. ELIGIBLE ACTIVITIES.

(a) ACTIVITIES INCLUDED.—Eligible activities assisted under this subtitle may include only—

(1) weatherization and other cost-effective energy-related repairs of homes and other buildings;

(2) the acquisition, construction, repair, reconstruction, or installation of reliable and cost-efficient facilities for the generation, transmission or distribution of electricity, and telecommunications, for consumption in a rural and remote community or communities;

(3) the acquisition, construction, repair, reconstruction, remediation or installation of facilities for the safe storage and efficient management of bulk fuel by rural and remote communities, and facilities for the distribution of such fuel to consumers in a rural or remote community;

(4) facilities and training to reduce costs of maintaining and operating generation, distribution or transmission systems to a rural and remote community or communities;

(5) the institution of professional management and maintenance services for electricity generation, transmission or distribution to a rural and remote community or communities;

(6) the investigation of the feasibility of alternate energy sources for a rural and remote community or communities;

(7) acquisition, construction, repair, reconstruction, operation, maintenance, or installation of facilities for water or wastewater service;

(8) the acquisition or disposition of real property (including air rights, water rights, and other interests therein) for eligible rural and remote community development activities; and

(9) activities necessary to develop and implement a comprehensive rural and remote development plan, including payment of reasonable administrative costs related to planning and execution of rural and remote community development activities.

(b) ACTIVITIES UNDERTAKEN THROUGH ELECTRIC UTILITIES.—Eligible activities may be undertaken either directly by the rural and remote community, or by the rural and remote community through local electric utilities.

SEC. 947. ALLOCATION AND DISTRIBUTION OF FUNDS.

For each fiscal year, of the amount approved in an appropriation Act under section 903 for grants in any year, the Secretary shall distribute to each rural and remote community which has filed a final statement of rural and remote community development objectives and projected use of funds under section 945, an amount which shall be allocated among the rural and remote communities that filed a final statement of rural and remote community development objectives and projected use of funds under section 945 proportionate to the percentage that the average retail price per kilowatt hour of electricity for all classes of consumers in the rural and remote community exceeds the national average retail price per kilowatt hour for electricity for all consumers in the United States, as determined by data provided by the Department of Energy's Energy Information Administration. In allocating funds under this section, the Secretary shall give special consideration to those rural and remote communities that increase economies of scale through consolidation of services, affiliation and regionalization of eligible activities under this title.

SEC. 948. RURAL AND REMOTE COMMUNITY ELECTRIFICATION GRANTS.

Section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 940c) is amended by adding after subsection (b) the following:

''(c) RURAL AND REMOTE COMMUNITIES ELECTRIFICATION GRANTS.—The Secretary of Agriculture, in consultation with the Secretary of Energy and the Secretary of the Interior, may provide grants under this Act for the purpose of increasing energy efficiency, siting or upgrading transmission and distribution lines, or providing or modernizing electric facilities to—

''(1) a unit of local government of a State or territory; or

''(2) an Indian tribe or Tribal College or University as defined in section 316(b)(3) of the Higher Education Act (20 U.S.C. 1059c(b)(3)).

''(d) GRANT CRITERIA.—The Secretary shall make grants based on a determination of cost-effectiveness and most effective use of the funds to achieve the stated purposes of this section.

''(e) PREFERENCE.—In making grants under this section, the Secretary shall give a preference to renewable energy facilities.

''(f) DEFINITION.—For purposes of this section, the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(g) AUTHORIZATION.—For the purpose of carrying out subsection (c), there are authorized to be appropriated to the Secretary $20,000,000 for each of the 7 fiscal years following the date of enactment of this subsection.''.

SEC. 949. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated $5,000,000 for each of fiscal years 2003 through 2009 to the Denali Commission established by the Denali Commission Act of 1998 (42 U.S.C. 3121 note) for the purposes of funding the power cost equalization program.

SEC. 950. RURAL RECOVERY COMMUNITY DEVELOPMENT BLOCK GRANTS.

(a) FINDINGS; PURPOSE.—

(1) FINDINGS.—Congress finds that—

(A) a modern infrastructure, including affordable housing, wastewater and water service, and advanced technology capabilities is a necessary ingredient of a modern society and development of a prosperous economy with minimal environmental impacts;

(B) the Nation's rural areas face critical social, economic, and environmental problems, arising in significant measure from the growing cost of infrastructure development in rural areas that suffer from low per capita income and high rates of outmigration and are not adequately addressed by existing Federal assistance programs; and

(C) the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable rural areas as social, economic, and political entities.

(2) PURPOSE.—The purpose of this section is to provide for the development and maintenance of viable rural areas through the provision of affordable housing and community development assistance to eligible units of general local government and eligible Native American groups in rural areas with excessively high rates of outmigration and low per capita income levels.

(b) DEFINITIONS.—In this section:

(1) ELIGIBLE UNIT OF GENERAL LOCAL GOVERNMENT.—The term ''eligible unit of general local government'' means a unit of general local government that is the governing body of a rural recovery area.

(2) ELIGIBLE INDIAN TRIBE.—The term ''eligible Indian tribe'' means the governing body of an Indian tribe that is located in a rural recovery area.

(3) GRANTEE.—The term ''grantee'' means an eligible unit of general local government or eligible Indian tribe that receives a grant under this section.

(4) NATIVE AMERICAN GROUP.—The term ''Native American group'' means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) or was considered an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

(5) RURAL RECOVERY AREA.—The term ''rural recovery area'' means any geographic area represented by a unit of general local government or a Native American group—

(A) the borders of which are not adjacent to a metropolitan area;

(B) in which—

(i) the population outmigration level equals or exceeds 1 percent over the most recent 5 year period, as determined by the Secretary of Housing and Urban Development; and

(ii) the per capita income is less than that of the national nonmetropolitan average; and

(C) that does not include a city with a population of more than 15,000.

(6) UNIT OF GENERAL LOCAL GOVERNMENT.—

(A) IN GENERAL.—The term ''unit of general local government'' means any city, county, town, township, parish, village, borough (organized or unorganized), or other general purpose political subdivision of a State; Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Puerto Rico, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions that, except as provided in section 106(d)(4), is recognized by the Secretary; and the District of Columbia.

(B) OTHER ENTITIES INCLUDED.—The term also includes a State or a local public body or agency, community association, or other entity, that is approved by the Secretary for the purpose of providing public facilities or services to a new community.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Secretary of the Interior or the Secretary of Energy, as appropriate.

(c) GRANT AUTHORITY.—The Secretary may make grants in accordance with this section to eligible units of general local government, Native American groups and eligible Indian tribes that meet the requirements of subsection (d) to carry out eligible activities described in subsection (f).

(d) ELIGIBILITY REQUIREMENTS.—

(1) STATEMENT OF RURAL DEVELOPMENT OBJECTIVES.—In order to receive a grant under this section for a fiscal year, an eligible unit of general local government, Native American group or eligible Indian tribe—

(A) shall—

(i) publish a proposed statement of rural development objectives and a description of the proposed eligible activities described in subsection (f) for which the grant will be used; and

(ii) afford residents of the rural recovery area served by the eligible unit of general local government, Native American groups or eligible Indian tribe with an opportunity to examine the contents of the proposed statement and the proposed eligible activities published under clause (i), and to submit comments to the eligible unit of general local government, Native American group or eligible Indian tribe, as applicable, on the proposed statement and the proposed eligible activities, and the overall community development performance of the eligible unit of general local government, Native American groups or eligible Indian tribe, as applicable; and

(B) based on any comments received under subparagraph (A)(ii), prepare and submit to the Secretary—

(i) a final statement of rural development objectives;

(ii) a description of the eligible activities described in subsection (f) for which a grant received under this section will be used; and

(iii) a certification that the eligible unit of general local government, Native American

groups or eligible Indian tribe, as applicable, will comply with the requirements of paragraph (2).

(2) PUBLIC NOTICE AND COMMENT.—In order to enhance public accountability and facilitate the coordination of activities among different levels of government, an eligible unit of general local government, Native American groups or eligible Indian tribe that receives a grant under this section shall, as soon as practicable after such receipt, provide the residents of the rural recovery area served by the eligible unit of general local government, Native American groups or eligible Indian tribe, as applicable, with—

(A) a copy of the final statement submitted under paragraph (1)(B);

(B) information concerning the amount made available under this section and the eligible activities to be undertaken with that amount;

(C) reasonable access to records regarding the use of any amounts received by the eligible unit of general local government, Native American groups or eligible Indian tribe under this section in any preceding fiscal year; and

(D) reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of amounts received under this section from one eligible activity to another.

(e) DISTRIBUTION OF GRANTS.—

(1) IN GENERAL.—In each fiscal year, the Secretary shall distribute to each eligible unit of general local government, Native American groups and eligible Indian tribe that meets the requirements of subsection (d)(1) a grant in an amount described in paragraph (2).

(2) AMOUNT.—Of the total amount made available to carry out this section in each fiscal year, the Secretary shall distribute to each grantee the amount equal to the greater of—

(A) the pro rata share of the grantee, as determined by the Secretary, based on the combined annual population outmigration level (as determined by the Secretary of Housing and Urban Development) and the per capita income for the rural recovery area served by the grantee; or

(B) $200,000.

(f) ELIGIBLE ACTIVITIES.—Each grantee shall use amounts received under this section for one or more of the following eligible activities, which may be undertaken either directly by the grantee, or by any local economic development corporation, regional planning district, nonprofit community development corporation, or statewide development organization authorized by the grantee—

(1) the acquisition, construction, repair, reconstruction, operation, maintenance, or installation of facilities for water and wastewater service or any other infrastructure needs determined to be critical to the further development or improvement of a designated industrial park;

(2) the acquisition or disposition of real property (including air rights, water rights, and other interests therein) for rural community development activities;

(3) the development of telecommunications infrastructure within a designated industrial park that encourages high technology business development in rural areas;

(4) activities necessary to develop and implement a comprehensive rural development plan, including payment of reasonable administrative costs related to planning and execution of rural development activities; or

(5) affordable housing initiatives.

(g) PERFORMANCE AND EVALUATION REPORT.—

(1) IN GENERAL.—Each grantee shall annually submit to the appropriate Secretary a performance and evaluation report, concerning the use of amounts received under this section.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include a description of—

(A) the eligible activities carried out by the grantee with amounts received under this section, and the degree to which the grantee has achieved the rural development objectives included in the final statement submitted under subsection (d)(1);

(B) the nature of and reasons for any change in the rural development objectives or the eligible activities of the grantee after submission of the final statement under subsection (d)(1); and

(C) any manner in which the grantee would change the rural development objectives of the grantee as a result of the experience of the grantee in administering amounts received under this section.

(h) RETENTION OF INCOME.—A grantee may retain any income that is realized from the grant, if—

(1) the income was realized after the initial disbursement of amounts to the grantee under this section; and

(2) the—

(A) grantee agrees to utilize the income for one or more eligible activities; or

(B) amount of the income is determined by the Secretary to be so small that compliance with subparagraph (A) would create an unreasonable administrative burden on the grantee.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $100,000,000 for each of fiscal years 2003 through 2009.

DIVISION D—INTEGRATION OF ENERGY POLICY AND CLIMATE CHANGE POLICY

TITLE X—NATIONAL CLIMATE CHANGE POLICY

Subtitle A—Sense of Congress

SEC. 1001. SENSE OF CONGRESS ON CLIMATE CHANGE.

(a) FINDINGS.—The Congress makes the following findings:

(1) Evidence continues to build that increases in atmospheric concentrations of man-made greenhouse gases are contributing to global climate change.

(2) The Intergovernmental Panel on Climate Change (IPCC) has concluded that ''there is new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities'' and that the Earth's average temperature can be expected to rise between 2.5 and 10.4 degrees Fahrenheit in this century.

(3) The National Academy of Sciences confirmed the findings of the IPCC, stating that ''the IPCC's conclusion that most of the observed warming of the last 50 years is likely to have been due to the increase of greenhouse gas concentrations accurately reflects the current thinking of the scientific community on this issue'' and that ''there is general agreement that the observed warming is real and particularly strong within the past twenty years''. The National Academy of Sciences also noted that ''because there is considerable uncertainty in current understanding of how the climate system varies naturally and reacts to emissions of greenhouse gases and aerosols, current estimates of the magnitude of future warming should be regarded as tentative and subject to future adjustments upward or downward''.

(4) The IPCC has stated that in the last 40 years, the global average sea level has risen, ocean heat content has increased, and snow cover and ice extent have decreased, which threatens to inundate low-lying island nations and coastal regions throughout the world.

(5) In October 2000, a United States Government report found that global climate change may harm the United States by altering crop yields, accelerating sea-level rise, and increasing the spread of tropical infectious diseases.

(6) In 1992, the United States ratified the United Nations Framework Convention on Climate Change (UNFCCC), the ultimate objective of which is the ''stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner''.

(7) The UNFCCC stated in part that the Parties to the Convention are to implement policies ''with the aim of returning . . . to their 1990 levels anthropogenic emissions of carbon dioxide and other greenhouse gases'' under the principle that ''policies and measures . . . should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change''.

(8) There is a shared international responsibility to address this problem, as industrial nations are the largest historic and current emitters of greenhouse gases and developing nations' emissions will significantly increase in the future.

(9) The UNFCCC further stated that ''developed country Parties should take the lead in combating climate change and the adverse effects thereof'', as these nations are the largest historic and current emitters of greenhouse gases. The UNFCCC also stated that ''steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas''.

(10) Senate Resolution 98 of the One Hundred Fifth Congress, which expressed that developing nations must also be included in any future, binding climate change treaty and such a treaty must not result in serious harm to the United States economy, should not cause the United States to abandon its shared responsibility to help reduce the risks of climate change and its impacts. Future international efforts in this regard should focus on recognizing the equitable responsibilities for addressing climate change by all nations, including commitments by the largest developing country emitters in a future, binding climate change treaty.

(11) It is the position of the United States that it will not interfere with the plans of any nation that chooses to ratify and implement the Kyoto Protocol to the UNFCCC.

(12) American businesses need to know how governments worldwide will address the risks of climate change.

(13) The United States benefits from investments in the research, development and deployment of a range of clean energy and efficiency technologies that can reduce the risks of climate change and its impacts and that can make the United States economy more productive, bolster energy security, create jobs, and protect the environment.

(b) SENSE OF CONGRESS.—It is the sense of the United States Congress that the United States should demonstrate international leadership and responsibility in reducing the health, environmental, and economic risks posed by climate change by—

(1) taking responsible action to ensure significant and meaningful reductions in emissions of greenhouse gases from all sectors;

(2) creating flexible international and domestic mechanisms, including joint implementation, technology deployment, tradable credits for emissions reductions and carbon sequestration projects that will reduce, avoid, and sequester greenhouse gas emissions; and

(3) participating in international negotiations, including putting forth a proposal to the Conference of the Parties, with the objective of securing United States participation in a future binding climate change Treaty in a manner that is consistent with the environmental objectives of the UNFCCC, that protects the economic interests of the United States, and recognizes the shared international responsibility for addressing climate change, including developing country participation.

Subtitle B—Climate Change Strategy

SEC. 1011. SHORT TITLE.

This subtitle may be cited as the ''Climate Change Strategy and Technology Innovation Act of 2003''.

SEC. 1012. DEFINITIONS.

In this subtitle:

(1) CLIMATE-FRIENDLY TECHNOLOGY.—The term ''climate-friendly technology'' means any energy supply or end-use technology that, over the life of the technology and compared to similar technology in commercial use as of the date of enactment of this Act—

(A) results in reduced emissions of greenhouse gases;

(B) may substantially lower emissions of other pollutants; and

(C) may generate substantially smaller or less hazardous quantities of solid or liquid waste.

(2) DEPARTMENT.—The term ''Department'' means the Department of Energy.

(3) DEPARTMENT OFFICE.—The term ''Department Office'' means the Office of Climate Change Technology of the Department established by section 1015(a).

(4) FEDERAL AGENCY.—The term ''Federal agency'' has the meaning given the term ''agency'' in section 551 of title 5, United States Code.

(5) GREENHOUSE GAS.—The term ''greenhouse gas'' means—

(A) an anthropogenic gaseous constituent of the atmosphere (including carbon dioxide, methane, nitrous oxide, chlorofluorocarbons, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and tropospheric ozone) that absorbs and re-emits infrared radiation and influences climate; and

(B) an anthropogenic aerosol (such as black soot) that absorbs solar radiation and influences climate.

(6) INTERAGENCY TASK FORCE.—The term ''Interagency Task Force'' means the Interagency Task Force established under section 1014(e).

(7) KEY ELEMENT.—The term ''key element'', with respect to the Strategy, means—

(A) definition of interim emission mitigation levels, that, coupled with specific mitigation approaches and after taking into account actions by other nations (if any), would result in stabilization of greenhouse gas concentrations;

(B) technology development, including—

(i) a national commitment to double energy research and development by the United States public and private sectors; and

(ii) in carrying out such research and development, a national commitment to provide a high degree of emphasis on bold, breakthrough technologies that will make possible a profound transformation of the energy, transportation, industrial, agricultural, and building sectors of the United States;

(C) climate adaptation research that focuses on actions necessary to adapt to climate change—

(i) that may have already occurred; or

(ii) that may occur under future climate change scenarios;

(D) climate science research that—

(i) builds on the substantial scientific understanding of climate change that exists as of the date of enactment of this subtitle; and

(ii) focuses on reducing the remaining scientific, technical, and economic uncertainties to aid in the development of sound response strategies.

(8) LONG-TERM GOAL OF THE STRATEGY.—The term ''long-term goal of the Strategy'' means the long-term goal in section 1013(a)(1).

(9) MITIGATION.—The term ''mitigation'' means actions that reduce, avoid, or sequester greenhouse gases.

(10) NATIONAL ACADEMY OF SCIENCES.—The term ''National Academy of Sciences'' means the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, and the National Research Council.

(11) QUALIFIED INDIVIDUAL.—

(A) IN GENERAL.—The term ''qualified individual'' means an individual who has demonstrated expertise and leadership skills to draw on other experts in diverse fields of knowledge that are relevant to addressing the climate change challenge.

(B) FIELDS OF KNOWLEDGE.—The fields of knowledge referred to in subparagraph (A) are—

(i) the science of climate change and its impacts;

(ii) energy and environmental economics;

(iii) technology transfer and diffusion;

(iv) the social dimensions of climate change;

(v) climate change adaptation strategies;

(vi) fossil, nuclear, and renewable energy technology;

(vii) energy efficiency and energy conservation;

(viii) energy systems integration;

(ix) engineered and terrestrial carbon sequestration;

(x) transportation, industrial, and building sector concerns;

(xi) regulatory and market-based mechanisms for addressing climate change;

(xii) risk and decision analysis;

(xiii) strategic planning; and

(xiv) the international implications of climate change strategies.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(13) STABILIZATION OF GREENHOUSE GAS CONCENTRATIONS.—The term ''stabilization of greenhouse gas concentrations'' means the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, recognizing that such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner, as contemplated by the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992.

(14) STRATEGY.—The term ''Strategy'' means the National Climate Change Strategy developed under section 1013.

(15) WHITE HOUSE OFFICE.—The term ''White House Office'' means the Office of National Climate Change Policy established by section 1014(a).

SEC. 1013. NATIONAL CLIMATE CHANGE STRATEGY.

(a) IN GENERAL.—The President, through the director of the White House Office and in consultation with the Interagency Task Force, shall develop a National Climate Change Strategy, which shall—

(1) have the long-term goal of stabilization of greenhouse gas concentrations through actions taken by the United States and other nations;

(2) recognize that accomplishing the long-term goal of the Strategy will take from many decades to more than a century, but acknowledging that significant actions must begin in the near term;

(3) incorporate the four key elements;

(4) be developed on the basis of an examination of a broad range of emissions levels and dates for achievement of those levels (including those evaluated by the Intergovernmental Panel on Climate Change and those consistent with United States treaty commitments) that, after taking into account actions by other nations, would achieve the long-term goal of the Strategy;

(5) consider the broad range of activities and actions that can be taken by United States entities to reduce, avoid, or sequester greenhouse gas emissions both within the United States and in other nations through the use of market mechanisms, which may include, but not be limited to, mitigation activities, terrestrial sequestration, earning offsets through carbon capture or project-based activities, trading of emissions credits in domestic and international markets, and the application of the resulting credits from any of the above within the United States;

(6) minimize any adverse short-term and long-term social, economic, national security, and environmental impacts, including ensuring that the strategy is developed in an economically and environmentally sound manner;

(7) incorporate mitigation approaches leading to the development and deployment of advanced technologies and practices that will reduce, avoid, or sequester greenhouse gas emissions;

(8) be consistent with the goals of energy, transportation, industrial, agricultural, forestry, environmental, economic, and other relevant policies of the United States;

(9) take into account—

(A) the diversity of energy sources and technologies;

(B) supply-side and demand-side solutions; and

(C) national infrastructure, energy distribution, and transportation systems;

(10) be based on an evaluation of a wide range of approaches for achieving the long-term goal of the Strategy, including evaluation of—

(A) a variety of cost-effective Federal and State policies, programs, standards, and incentives;

(B) policies that integrate and promote innovative, market-based solutions in the United States and in foreign countries; and

(C) participation in other international institutions, or in the support of international activities, that are established or conducted to achieve the long-term goal of the Strategy;

(11) in the final recommendations of the Strategy—

(A) emphasize policies and actions that achieve the long-term goal of the Strategy; and

(B) provide specific recommendations concerning—

(i) measures determined to be appropriate for short-term implementation, giving preference to cost-effective and technologically feasible measures that will—

(I) produce measurable net reductions in United States emissions, compared to expected trends, that lead toward achievement of the long-term goal of the Strategy; and

(II) minimize any adverse short-term and long-term economic, environmental, national security, and social impacts on the United States;

(ii) the development of technologies that have the potential for long-term implementation—

(I) giving preference to technologies that have the potential to reduce significantly the overall cost of achieving the long-term goal of the Strategy; and

(II) considering a full range of energy sources, energy conversion and use technologies, and efficiency options;

(iii) such changes in institutional and technology systems are necessary to adapt to climate change in the short-term and the long-term;

(iv) such review, modification, and enhancement of the scientific, technical, and economic research efforts of the United States, and improvements to the data resulting from research, as are appropriate to improve the accuracy of predictions concerning climate change and the economic and social costs and opportunities relating to climate change; and

(v) changes that should be made to project and grant evaluation criteria under other Federal research and development programs so that those criteria do not inhibit development of climate-friendly technologies;

(12) recognize that the Strategy is intended to guide the Nation's effort to address climate change, but it shall not create a legal obligation on the part of any person or entity other than the duties of the Director of the White House Office and Interagency Task Force in the development of the Strategy;

(13) have a scope that considers the totality of United States public, private, and public-private sector actions that bear on the long-term goal;

(14) be developed in a manner that provides for meaningful participation by, and consultation among, Federal, State, tribal, and local government agencies, nongovernmental organizations, academia, scientific bodies, industry, the public, and other interested parties in accordance with subsections (b)(3)(C)(iv)(II) and (e)(3)(B)(ii) of section 1014;

(15) address how the United States should engage State, tribal, and local governments in developing and carrying out a response to climate change;

(16) promote, to the maximum extent practicable, public awareness, outreach, and information-sharing to further the understanding of the full range of climate change-related issues;

(17) provide a detailed explanation of how the measures recommended by the Strategy will ensure that they do not result in serious harm to the economy of the United States;

(18) provide a detailed explanation of how the measures recommended by the Strategy will achieve its long-term goal;

(19) include any recommendations for legislative and administrative actions necessary to implement the Strategy;

(20) serve as a framework for climate change actions by all Federal agencies;

(21) recommend which Federal agencies are, or should be, responsible for the various aspects of implementation of the Strategy and any budgetary implications;

(22) address how the United States should engage foreign governments in developing an international response to climate change; and

(23) incorporate initiatives to open markets and promote the deployment of a range of climate-friendly technologies developed in the United States and abroad.

(b) SUBMISSION TO CONGRESS.—Not later than 1 year after the date of enactment of this section, the President, through the Interagency Task Force and the Director, shall submit to Congress the Strategy, in the form of a report that includes—

(1) a description of the Strategy and its goals, including how the Strategy addresses each of the 4 key elements;

(2) an inventory and evaluation of Federal programs and activities intended to carry out the Strategy;

(3) a description of how the Strategy will serve as a framework of climate change response actions by all Federal agencies, including a description of coordination mechanisms and interagency activities;

(4) evidence that the Strategy is consistent with other energy, transportation, industrial, agricultural, forestry, environmental, economic, and other relevant policies of the United States;

(5) a description of provisions in the Strategy that ensure that it minimizes any adverse short-term and long-term social, economic, national security, and environmental impacts, including ensuring that the Strategy is developed in an economically and environmentally sound manner;

(6) evidence that the Strategy has been developed in a manner that provides for participation by, and consultation among, Federal, State, tribal, and local government agencies, nongovernmental organizations, academia, scientific bodies, industry, the public, and other interested parties;

(7) a description of Federal activities that promote, to the maximum extent practicable, public awareness, outreach, and information-sharing to further the understanding of the full range of climate change-related issues; and

(8) recommendations for legislative or administrative changes to Federal programs or activities implemented to carry out this Strategy, in light of new knowledge of climate change and its impacts and costs or benefits, or technological capacity to improve mitigation or adaption activities.

(c) UPDATES.—Not later than 4 years after the date of submission of the Strategy to Congress under subsection (b), and at the end of each 4-year period thereafter, the President shall submit to Congress an updated version of the Strategy.

(d) PROGRESS REPORTS.—Not later than 1 year after the date of submission of the Strategy to Congress under subsection (b), and annually thereafter at the time that the President submits to the Congress the budget of the United States Government under section 1105 of title 31, United States Code, the President shall submit to Congress a report that—

(1) describes the Strategy, its goals, and the Federal programs and activities intended to carry out the Strategy through technological, scientific, mitigation, and adaptation activities;

(2) evaluates the Federal programs and activities implemented as part of this Strategy against the goals and implementation dates outlined in the Strategy;

(3) assesses the progress in implementation of the Strategy;

(4) incorporates the technology program reports required pursuant to section 1015(a)(3) and subsections (d) and (e) of section 1321;

(5) describes any changes to Federal programs or activities implemented to carry out this Strategy, in light of new knowledge of climate change and its impacts and costs or benefits, or technological capacity to improve mitigation or adaptation activities;

(6) describes all Federal spending on climate change for the current fiscal year and each of the 5 years previous; categorized by Federal agency and program function (including scientific research, energy research and development, regulation, education, and other activities);

(7) estimates the budgetary impact for the current fiscal year and each of the 5 years previous of any Federal tax credits, tax deductions or other incentives claimed by taxpayers that are directly or indirectly attributable to greenhouse gas emissions reduction activities;

(8) estimates the amount, in metric tons, of net greenhouse gas emissions reduced, avoided, or sequestered directly or indirectly as a result of the implementation of the Strategy;

(9) evaluates international research and development and market-based activities and the mitigation actions taken by the United States and other nations to achieve the long-term goal of the Strategy; and

(10) makes recommendations for legislative or administrative actions or adjustments that will accelerate progress towards meeting the near-term and long-term goals contained in the Strategy.

(e) NATIONAL ACADEMY OF SCIENCES REVIEW.—

(1) IN GENERAL.—Not later than 90 days after the date of publication of the Strategy under subsection (b) and each update under subsection (c), the Director of the National Science Foundation, on behalf of the Director of the White House Office and the Interagency Task Force, shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of the Strategy or update.

(2) CRITERIA.—The review by the National Academy of Sciences shall evaluate the goals and recommendations contained in the Strategy or update, taking into consideration—

(A) the adequacy of effort and the appropriateness of focus of the totality of all public, private, and public-private sector actions of the United States with respect to the Strategy, including the four key elements;

(B) the adequacy of the budget and the effectiveness with which each Federal agency is carrying out its responsibilities;

(C) current scientific knowledge regarding climate change and its impacts;

(D) current understanding of human social and economic responses to climate change, and responses of natural ecosystems to climate change;

(E) advancements in energy technologies that reduce, avoid, or sequester greenhouse gases or otherwise mitigate the risks of climate change;

(F) current understanding of economic costs and benefits of mitigation or adaptation activities;

(G) the existence of alternative policy options that could achieve the Strategy goals at lower economic, environmental, or social cost; and

(H) international activities and the actions taken by the United States and other nations to achieve the long-term goal of the Strategy.

(3) REPORT.—Not later than 1 year after the date of submittal to the Congress of the Strategy or update, as appropriate, the National Academy of Sciences shall prepare and submit to the Congress and the President a report concerning the results of its review, along with any recommendations as appropriate. Such report shall also be made available to the public.

(4) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this subsection, there are authorized to be appropriated to the National Science Foundation such sums as may be necessary.

SEC. 1014. OFFICE OF NATIONAL CLIMATE CHANGE POLICY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established, within the Executive Office of the President, the Office of National Climate Change Policy.

(2) FOCUS.—The White House Office shall have the focus of achieving the long-term goal of the Strategy while minimizing adverse short-term and long-term economic and social impacts.

(3) DUTIES.—Consistent with paragraph (2), the White House Office shall—

(A) establish policies, objectives, and priorities for the Strategy;

(B) in accordance with subsection (d), establish the Interagency Task Force to serve as the primary mechanism through which the heads of Federal agencies shall assist the Director of the White House Office in developing and implementing the Strategy;

(C) to the maximum extent practicable, ensure that the Strategy is based on objective, quantitative analysis, drawing on the analytical capabilities of Federal and State agencies, especially the Department Office;

(D) advise the President concerning necessary changes in organization, management, budgeting, and personnel allocation of Federal agencies involved in climate change response activities; and

(E) advise the President and notify a Federal agency if the policies and discretionary programs of the agency are not well aligned with, or are not contributing effectively to, the long-term goal of the Strategy.

(b) DIRECTOR OF THE WHITE HOUSE OFFICE.—

(1) IN GENERAL.—The White House Office shall be headed by a Director, who shall report directly to the President, and shall consult with the appropriate economic, environmental, national security, domestic policy, science and technology and other offices with the Executive Office of the President.

(2) APPOINTMENT.—The Director of the White House Office shall be a qualified individual appointed by the President, by and with the advice and consent of the Senate.

(3) DUTIES OF THE DIRECTOR OF THE WHITE HOUSE OFFICE.—

(A) STRATEGY.—In accordance with section 1013, the Director of the White House Office shall coordinate the development and updating of the Strategy.

(B) INTERAGENCY TASK FORCE.—The Director of the White House Office shall serve as Chair of the Interagency Task Force.

(C) ADVISORY DUTIES.—

(i) ENERGY, ECONOMIC, ENVIRONMENTAL, TRANSPORTATION, INDUSTRIAL, AGRICULTURAL, BUILDING, FORESTRY, AND OTHER PROGRAMS.—The Director of the White House Office, using an integrated perspective considering the totality of actions in the United States, shall advise the President and the heads of Federal agencies on—

(I) the extent to which United States energy, economic, environmental, transportation, industrial, agricultural, forestry, building, and other

relevant programs are capable of producing progress on the long-term goal of the Strategy; and

(II) the extent to which proposed or newly created energy, economic, environmental, transportation, industrial, agricultural, forestry, building, and other relevant programs positively or negatively affect the ability of the United States to achieve the long-term goal of the Strategy.

(ii) TAX, TRADE, AND FOREIGN POLICIES.—The Director of the White House Office, using an integrated perspective considering the totality of actions in the United States, shall advise the President and the heads of Federal agencies on—

(I) the extent to which the United States tax policy, trade policy, and foreign policy are capable of producing progress on the long-term goal of the Strategy; and

(II) the extent to which proposed or newly created tax policy, trade policy, and foreign policy positively or negatively affect the ability of the United States to achieve the long-term goal of the Strategy.

(iii) INTERNATIONAL TREATIES.—The Secretary of State, acting in conjunction with the Interagency Task Force and using the analytical tools available to the White House Office, shall provide to the Director of the White House Office an opinion that—

(I) specifies, to the maximum extent practicable, the economic and environmental costs and benefits of any proposed international treaties or components of treaties that have an influence on greenhouse gas management; and

(II) assesses the extent to which the treaties advance the long-term goal of the Strategy, while minimizing adverse short-term and long-term economic and social impacts and considering other impacts.

(iv) CONSULTATION.—

(I) WITH MEMBERS OF INTERAGENCY TASK FORCE.—To the extent practicable and appropriate, the Director of the White House Office shall consult with all members of the Interagency Task Force before providing advice to the President.

(II) WITH OTHER INTERESTED PARTIES.—The Director of the White House Office shall establish a process for obtaining the meaningful participation of Federal, State, tribal, and local government agencies, nongovernmental organizations, academia, scientific bodies, industry, the public, and other interested parties in the development and updating of the Strategy.

(D) PUBLIC EDUCATION, AWARENESS, OUTREACH, AND INFORMATION-SHARING.—The Director of the White House Office, to the maximum extent practicable, shall promote public awareness, outreach, and information-sharing to further the understanding of the full range of climate change-related issues.

(4) ANNUAL REPORTS.—The Director of the White House Office, in consultation with the Interagency Task Force and other interested parties, shall prepare the annual reports for submission by the President to Congress under section 1013(d).

(5) ANALYSIS.—During development of the Strategy, preparation of the annual reports submitted under paragraph (4), and provision of advice to the President and the heads of Federal agencies, the Director of the White House Office shall place significant emphasis on the use of objective, quantitative analysis, taking into consideration any uncertainties associated with the analysis.

(c) STAFF.—

(1) IN GENERAL.—The Director of the White House Office shall employ a professional staff, including the staff appointed under paragraph (2), of not more than 25 individuals to carry out the duties of the White House Office.

(2) INTERGOVERNMENTAL PERSONNEL AND FELLOWSHIPS.—The Director of the White House Office may use the authority provided by the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4701 et seq.) and subchapter VI of chapter 33 of title 5, United States Code, and fellowships, to obtain staff from Federal agencies, academia, scientific bodies, or a National Laboratory (as that term is defined in section 1203), for appointments of a limited term.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) USE OF AVAILABLE APPROPRIATIONS.—From funds made available to Federal agencies for the fiscal year in which this title is enacted, the President shall provide such sums as are necessary to carry out the duties of the White House Office under this title until the date on which funds are made available under paragraph (2).

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Executive Office of the President to carry out the duties of the White House Office under this subtitle, $5,000,000 for each of fiscal years 2003 through 2011, to remain available through September 30, 2011.

(e) INTERAGENCY TASK FORCE.—

(1) IN GENERAL.—The Director of the White House Office shall establish the Interagency Task Force.

(2) COMPOSITION.—The Interagency Task Force shall be composed of—

(A) the Director of the White House Office, who shall serve as Chair;

(B) the Secretary of State;

(C) the Secretary of Energy;

(D) the Secretary of Commerce;

(E) the Secretary of Transportation;

(F) the Secretary of Agriculture;

(G) the Administrator of the Environmental Protection Agency;

(H) the Chairman of the Council of Economic Advisers;

(I) the Chairman of the Council on Environmental Quality;

(J) the Director of the Office of Science and Technology Policy;

(K) the Director of the Office of Management and Budget; and

(L) the heads of such other Federal agencies as the President considers appropriate.

(3) STRATEGY.—

(A) IN GENERAL.—The Interagency Task Force shall serve as the primary forum through which the Federal agencies represented on the Interagency Task Force jointly assist the Director of the White House Office in—

(i) developing and updating the Strategy; and

(ii) preparing annual reports under section 1013(d).

(B) REQUIRED ELEMENTS.—In carrying out subparagraph (A), the Interagency Task Force shall—

(i) take into account the long-term goal and other requirements of the Strategy specified in section 1013(a);

(ii) consult with State, tribal, and local government agencies, nongovernmental organizations, academia, scientific bodies, industry, the public, and other interested parties; and

(iii) build consensus around a Strategy that is based on strong scientific, technical, and economic analyses.

(4) WORKING GROUPS.—The Chair, in consultation with the members of the Interagency Task Force, may establish such topical working groups as are necessary to carry out the duties of the Interagency Task Force and implement the Strategy, taking into consideration the key elements of the Strategy. Such working groups may be comprised of members of the Interagency Task Force or their designees.

(f) STAFF.—In accordance with procedures established by the Chair of the Interagency Task Force, the Federal agencies represented on the Interagency Task Force shall provide staff from the agencies to support information, data collection, and analyses required by the Interagency Task Force.

(g) HEARINGS.—Upon request of the Chair, the Interagency Task Force may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Interagency Task Force considers to be appropriate.

SEC. 1015. OFFICE OF CLIMATE CHANGE TECHNOLOGY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established, within the Department, the Office of Climate Change Technology.

(2) DUTIES.—The Department Office shall—

(A) manage an energy technology research and development program that directly supports the Strategy by—

(i) focusing on high-risk, bold, breakthrough technologies that—

(I) have significant promise of contributing to the long-term goal of the Strategy by—

(aa) mitigating the emissions of greenhouse gases;

(bb) removing and sequestering greenhouse gases from emission streams; or

(cc) removing and sequestering greenhouse gases from the atmosphere;

(II) are not being addressed significantly by other Federal programs; and

(III) would represent a substantial advance beyond technology available on the date of enactment of this subtitle;

(ii) forging fundamentally new research and development partnerships among various Department, other Federal, and State programs, particularly between basic science and energy technology programs, in cases in which such partnerships have significant potential to affect the ability of the United States to achieve the long-term goal of the Strategy at the lowest possible cost;

(iii) forging international research and development partnerships that are in the interests of the United States and make progress on achieving the long-term goal of the Strategy;

(iv) making available, through monitoring, experimentation, and analysis, data that are essential to proving the technical and economic viability of technology central to addressing climate change; and

(v) transferring research and development programs to other program offices of the Department once such a research and development program crosses the threshold of high-risk research and moves into the realm of more conventional technology development;

(B) through active participation in the Interagency Task Force and utilization of the analytical capabilities of the Department Office, share analyses of alternative climate change strategies with other agencies represented on the Interagency Task Force to assist them in understanding—

(i) the scale of the climate change challenge; and

(ii) how actions of the Federal agencies on the Interagency Task Force positively or negatively contribute to climate change solutions;

(C) provide analytical support to the White House Office, particularly in support of the development of the Strategy and associated progress reporting;

(D) foster the development of tools, data, and capabilities to ensure that—

(i) the United States has a robust capability for evaluating alternative climate change response scenarios; and

(ii) the Department Office provides long-term analytical continuity during the terms of service of successive Presidents;

(E) identify the total contribution of all Department programs to the Strategy; and

(F) advise the Secretary on all aspects of climate change-related issues, including necessary changes in Department organization, management, budgeting, and personnel allocation in the programs involved in climate change response-related activities.

(3) ANNUAL REPORTS.—The Department Office shall prepare an annual report for submission by the Secretary to Congress and the White House Office that—

(A) assesses progress toward meeting the goals of the energy technology research and development program described in this section;

(B) assesses the activities of the Department Office;

(C) assesses the contributions of all energy technology research and development programs of the Department (including science programs) to the long-term goal and other requirements of the Strategy; and

(D) make recommendations for actions by the Department and other Federal agencies to address the components of technology development that are necessary to support the Strategy.

(b) DIRECTOR OF THE DEPARTMENT OFFICE.—

(1) IN GENERAL.—The Department Office shall be headed by a Director, who shall be a qualified individual appointed by the President, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(2) REPORTING.—The Director of the Department Office shall report directly to the Under Secretary for Energy and Science.

(3) VACANCIES.—A vacancy in the position of the Director of the Department Office shall be filled in the same manner as the original appointment was made.

(c) INTERGOVERNMENTAL PERSONNEL.—The Department Office may use the authority provided by the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4701 et seq.), subchapter VI of chapter 33 of title 5, United States Code, and other departmental personnel authorities, to obtain staff for appointments of a limited term.

(d) RELATIONSHIP TO OTHER DEPARTMENT PROGRAMS.—Each project carried out by the Department Office shall be—

(1) initiated only after consultation with one or more other appropriate program offices of the Department that support research and development in the areas relating to the project;

(2) managed by the Department Office; and

(3) in the case of a project that reaches a sufficient level of maturity, with the concurrence of the Department Office and the appropriate office described in paragraph (1), transferred to the appropriate office, along with the funds necessary to continue the project to the point at which non-Federal funding can provide substantial support for the project.

(e) COLLABORATION AND COST SHARING.—

(1) WITH OTHER FEDERAL AGENCIES.—Projects supported by the Department Office may include participation of, and be supported by, other Federal agencies that have a role in the development, commercialization, or transfer of energy, transportation, industrial, agricultural, forestry, or other climate change-related technology.

(2) WITH THE PRIVATE SECTOR.—

(A) IN GENERAL.—Notwithstanding section 1403, the Department Office shall create an operating model that allows for collaboration, division of effort, and cost sharing with industry on individual climate change response projects.

(B) REQUIREMENTS.—Although cost sharing in some cases may be appropriate, the Department Office shall focus on long-term high-risk research and development and should not make industrial partnerships or cost sharing a requirement, if such a requirement would bias the activities of the Department Office toward incremental innovations.

(C) REEVALUATION ON TRANSFER.—At such time as any bold, breakthrough research and development program reaches a sufficient level of technological maturity such that the program is transferred to a program office of the Department other than the Department Office, the cost-sharing requirements and criteria applicable to the program shall be reevaluated.

(D) PUBLICATION IN FEDERAL REGISTER.—Each cost-sharing agreement entered into under this paragraph shall be published in the Federal Register.

(f) ANALYSIS OF CLIMATE CHANGE STRATEGY.—

(1) IN GENERAL.—The Department Office shall foster the development and application of advanced computational tools, data, and capabilities that, together with the capabilities of other Federal agencies, support integrated assessment of alternative climate change response scenarios and implementation of the Strategy.

(2) PROGRAMS.—

(A) IN GENERAL.—The Department Office shall—

(i) develop and maintain core analytical competencies and complex, integrated computational modeling capabilities that, together with the capabilities of other Federal agencies, are necessary to support the design and implementation of the Strategy; and

(ii) track United States and international progress toward the long-term goal of the Strategy.

(B) INTERNATIONAL CARBON DIOXIDE SEQUESTRATION MONITORING AND DATA PROGRAM.—In consultation with Federal, State, academic, scientific, private sector, nongovernmental, tribal, and international carbon capture and sequestration technology programs, the Department Office shall design and carry out an international carbon dioxide sequestration monitoring and data program to collect, analyze, and make available the technical and economic data to ascertain—

(i) whether engineered sequestration and terrestrial sequestration will be acceptable technologies from regulatory, economic, and international perspectives;

(ii) whether carbon dioxide sequestered in geological formations or ocean systems is stable and has inconsequential leakage rates on a geologic time-scale; and

(iii) the extent to which forest, agricultural, and other terrestrial systems are suitable carbon sinks.

(3) AREAS OF EXPERTISE.—

(A) IN GENERAL.—The Department Office shall develop and maintain expertise in integrated assessment, modeling, and related capabilities necessary—

(i) to understand the relationship between natural, agricultural, industrial, energy, and economic systems;

(ii) to design effective research and development programs; and

(iii) to assist with the development and implementation of the Strategy.

(B) TECHNOLOGY TRANSFER AND DIFFUSION.—The expertise described in clause (i) shall include knowledge of technology transfer and technology diffusion in United States and foreign markets.

(4) DISSEMINATION OF INFORMATION.—The Department Office shall ensure, to the maximum extent practicable, that technical and scientific knowledge relating to greenhouse gas emission reduction, avoidance, and sequestration is broadly disseminated through publications, fellowships, and training programs.

(5) ASSESSMENTS.—In a manner consistent with the Strategy, the Department shall conduct assessments of deployment of climate-friendly technology.

(6) ANALYSIS.—During development of the Strategy, annual reports submitted under subsection (a)(3), and advice to the Secretary, the Director of the Department Office shall place significant emphasis on the use of objective, quantitative analysis, taking into consideration any associated uncertainties.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) USE OF AVAILABLE APPROPRIATIONS.—From funds made available to Federal agencies for the fiscal year in which this subtitle is enacted, the President shall provide such sums as are necessary to carry out the duties of the Department Office under this subtitle until the date on which funds are made available under paragraph (2).

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary, to carry out the duties of the Department Office under this subtitle, $4,750,000,000 for the period of fiscal years 2003 through 2011, to remain available through September 30, 2011.

(3) ADDITONAL AMOUNTS.—Amounts authorized to be appropriated under this section shall be in addition to—

(A) amounts made available to carry out the United States Global Change Research Program under the Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.); and

(B) amounts made available under other provisions of law for energy research and development.

SEC. 1016. ADDITIONAL OFFICES AND ACTIVITIES.

The Secretary of Agriculture, the Secretary of Transportation, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the heads of other Federal agencies may establish such offices and carry out such activities, in addition to those established or authorized by this Act, as are necessary to carry out this Act.

Subtitle C—Science and Technology Policy

SEC. 1021. GLOBAL CLIMATE CHANGE IN THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

Section 101(b) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601(b)) is amended—

(1) by redesignating paragraphs (7) through (13) as paragraphs (8) through (14), respectively; and

(2) by inserting after paragraph (6) the following:

''(7) improving efforts to understand, assess, predict, mitigate, and respond to global climate change;''.

SEC. 1022. DIRECTOR OF OFFICE OF SCIENCE AND TECHNOLOGY POLICY FUNCTIONS.

(a) ADVISE PRESIDENT ON GLOBAL CLIMATE CHANGE.—Section 204(b)(1) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6613(b)(1)) is amended by inserting ''global climate change,'' after ''to,''.

(b) ADVISE DIRECTOR OF OFFICE OF NATIONAL CLIMATE CHANGE POLICY.—Section 207 of that Act (42 U.S.C. 6616) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

''(b) ADVISE DIRECTOR OF OFFICE OF NATIONAL CLIMATE CHANGE POLICY.—In carrying out this Act, the Director shall advise the Director of the Office of National Climate Change Policy on matters concerning science and technology as they relate to global climate change.''.

Subtitle D—Miscellaneous Provisions

SEC. 1031. ADDITIONAL INFORMATION FOR REGULATORY REVIEW.

In each case that an agency prepares and submits a Statement of Energy Effects pursuant to Executive Order 13211 of May 18, 2001 (relating to actions concerning regulations that significantly affect energy supply, distribution, or use), the agency shall also submit an estimate of the change in net annual greenhouse gas emissions resulting from the proposed significant energy action and any reasonable alternatives to the action.

SEC. 1032. GREENHOUSE GAS EMISSIONS FROM FEDERAL FACILITIES.

(a) METHODOLOGY.—Not later than 1 year after the date of enactment of this section, the Secretary of Energy, Secretary of Agriculture, Secretary of Commerce, and Administrator of the Environmental Protection Agency shall publish a jointly developed methodology for preparing estimates of annual net greenhouse gas emissions from all federally owned, leased, or operated facilities and emission sources, including stationary, mobile, and indirect emissions as may be determined to be feasible.

(b) PUBLICATION.—Not later than 18 months after the date of enactment of this section, and annually thereafter, the Secretary of Energy shall publish an estimate of annual net greenhouse gas emissions from all federally owned,

leased, or operated facilities and emission sources, using the methodology published under subsection (a).

TITLE XI—NATIONAL GREENHOUSE GAS DATABASE

SEC. 1101. PURPOSE.

The purpose of this title is to establish a greenhouse gas inventory, reductions registry, and information system that—

(1) are complete, consistent, transparent, and accurate;

(2) will create reliable and accurate data that can be used by public and private entities to design efficient and effective greenhouse gas emission reduction strategies; and

(3) will acknowledge and encourage greenhouse gas emission reductions.

SEC. 1102. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) BASELINE.—The term ''baseline'' means the historic greenhouse gas emission levels of an entity, as adjusted upward by the designated agency to reflect actual reductions that are verified in accordance with—

(A) regulations promulgated under section 1104(c)(1); and

(B) relevant standards and methods developed under this title.

(3) DATABASE.—The term ''database'' means the National Greenhouse Gas Database established under section 1104.

(4) DESIGNATED AGENCY.—The term ''designated agency'' means a department or agency to which responsibility for a function or program is assigned under the memorandum of agreement entered into under section 1103(a).

(5) DIRECT EMISSIONS.—The term ''direct emissions'' means greenhouse gas emissions by an entity from a facility that is owned or controlled by that entity.

(6) ENTITY.—The term ''entity'' means—

(A) a person located in the United States; or

(B) a public or private entity, to the extent that the entity operates in the United States.

(7) FACILITY.—The term ''facility'' means—

(A) all buildings, structures, or installations located on any 1 or more contiguous or adjacent properties of an entity in the United States; and

(B) a fleet of 20 or more motor vehicles under the common control of an entity.

(8) GREENHOUSE GAS.—The term ''greenhouse gas'' means—

(A) carbon dioxide;

(B) methane;

(C) nitrous oxide;

(D) hydrofluorocarbons;

(E) perfluorocarbons;

(F) sulfur hexafluoride; and

(G) any other anthropogenic climate-forcing emissions with significant ascertainable global warming potential, as—

(i) recommended by the National Academy of Sciences under section 1107(b)(3); and

(ii) determined in regulations promulgated under section 1104(c)(1) (or revisions to the regulations) to be appropriate and practicable for coverage under this title.

(9) INDIRECT EMISSIONS.—The term ''indirect emissions'' means greenhouse gas emissions that—

(A) are a result of the activities of an entity; but

(B)(i) are emitted from a facility owned or controlled by another entity; and

(ii) are not reported as direct emissions by the entity the activities of which resulted in the emissions.

(10) REGISTRY.—The term ''registry'' means the registry of greenhouse gas emission reductions established as a component of the database under section 1104(b)(2).

(11) SEQUESTRATION.—

(A) IN GENERAL.—The term ''sequestration'' means the capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere.

(B) INCLUSIONS.—The term ''sequestration'' includes—

(i) soil carbon sequestration;

(ii) agricultural and conservation practices;

(iii) reforestation;

(iv) forest preservation;

(v) maintenance of an underground reservoir; and

(vi) any other appropriate biological or geological method of capture, isolation, or removal of greenhouse gases from the atmosphere, as determined by the Administrator.

SEC. 1103. ESTABLISHMENT OF MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall direct the Secretary of Energy, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Transportation, and the Administrator to enter into a memorandum of agreement under which those heads of Federal agencies will—

(1) recognize and maintain statutory and regulatory authorities, functions, and programs that—

(A) are established as of the date of enactment of this Act under other law;

(B) provide for the collection of data relating to greenhouse gas emissions and effects; and

(C) are necessary for the operation of the database;

(2)(A) distribute additional responsibilities and activities identified under this title to Federal departments or agencies in accordance with the missions and expertise of those departments and agencies; and

(B) maximize the use of available resources of those departments and agencies; and

(3) provide for the comprehensive collection and analysis of data on greenhouse gas emissions relating to product use (including the use of fossil fuels and energy-consuming appliances and vehicles).

(b) MINIMUM REQUIREMENTS.—The memorandum of agreement entered into under subsection (a) shall, at a minimum, retain the following functions for the designated agencies:

(1) DEPARTMENT OF ENERGY.—The Secretary of Energy shall be primarily responsible for developing, maintaining, and verifying the registry and the emission reductions reported under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)).

(2) DEPARTMENT OF COMMERCE.—The Secretary of Commerce shall be primarily responsible for the development of—

(A) measurement standards for the monitoring of emissions; and

(B) verification technologies and methods to ensure the maintenance of a consistent and technically accurate record of emissions, emission reductions, and atmospheric concentrations of greenhouse gases for the database.

(3) ENVIRONMENTAL PROTECTION AGENCY.—The Administrator shall be primarily responsible for—

(A) emissions monitoring, measurement, verification, and data collection under this title and title IV (relating to acid deposition control) and title VIII of the Clean Air Act (42 U.S.C. 7651 et seq.), including mobile source emissions information from implementation of the corporate average fuel economy program under chapter 329 of title 49, United States Code; and

(B) responsibilities of the Environmental Protection Agency relating to completion of the national inventory for compliance with the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992.

(4) DEPARTMENT OF AGRICULTURE.—The Secretary of Agriculture shall be primarily responsible for—

(A) developing measurement techniques for—

(i) soil carbon sequestration; and

(ii) forest preservation and reforestation activities; and

(B) providing technical advice relating to biological carbon sequestration measurement and verification standards for measuring greenhouse gas emission reductions or offsets.

(c) DRAFT MEMORANDUM OF AGREEMENT.—Not later than 15 months after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall publish in the Federal Register, and solicit comments on, a draft version of the memorandum of agreement described in subsection (a).

(d) NO JUDICIAL REVIEW.—The final version of the memorandum of agreement shall not be subject to judicial review.

SEC. 1104. NATIONAL GREENHOUSE GAS DATABASE.

(a) ESTABLISHMENT.—As soon as practicable after the date of enactment of this Act, the designated agencies, in consultation with the private sector and nongovernmental organizations, shall jointly establish, operate, and maintain a database, to be known as the ''National Greenhouse Gas Database'', to collect, verify, and analyze information on greenhouse gas emissions by entities.

(b) NATIONAL GREENHOUSE GAS DATABASE COMPONENTS.—The database shall consist of—

(1) an inventory of greenhouse gas emissions; and

(2) a registry of greenhouse gas emission reductions.

(c) COMPREHENSIVE SYSTEM.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the designated agencies shall jointly promulgate regulations to implement a comprehensive system for greenhouse gas emissions reporting, inventorying, and reductions registration.

(2) REQUIREMENTS.—The designated agencies shall ensure, to the maximum extent practicable, that—

(A) the comprehensive system described in paragraph (1) is designed to—

(i) maximize completeness, transparency, and accuracy of information reported; and

(ii) minimize costs incurred by entities in measuring and reporting greenhouse gas emissions; and

(B) the regulations promulgated under paragraph (1) establish procedures and protocols necessary—

(i) to prevent the reporting of some or all of the same greenhouse gas emissions or emission reductions by more than 1 reporting entity;

(ii) to provide for corrections to errors in data submitted to the database;

(iii) to provide for adjustment to data by reporting entities that have had a significant organizational change (including mergers, acquisitions, and divestiture), in order to maintain comparability among data in the database over time;

(iv) to provide for adjustments to reflect new technologies or methods for measuring or calculating greenhouse gas emissions; and

(v) to account for changes in registration of ownership of emission reductions resulting from a voluntary private transaction between reporting entities.

(3) BASELINE IDENTIFICATION AND PROTECTION.—Through regulations promulgated under paragraph (1), the designated agencies shall develop and implement a system that provides—

(A) for the provision of unique serial numbers to identify the verified emission reductions made by an entity relative to the baseline of the entity;

(B) for the tracking of the reductions associated with the serial numbers; and

(C) that the reductions may be applied, as determined to be appropriate by any Act of Congress enacted after the date of enactment of this Act, toward a Federal requirement under such an Act that is imposed on the entity for the purpose of reducing greenhouse gas emissions.

SEC. 1105. GREENHOUSE GAS REDUCTION REPORTING.

(a) IN GENERAL.—An entity that participates in the registry shall meet the requirements described in subsection (b).

(b) REQUIREMENTS.—

(1) IN GENERAL.—The requirements referred to in subsection (a) are that an entity (other than an entity described in paragraph (2)) shall—

(A) establish a baseline (including all of the entity's greenhouse gas emissions on an entity-wide basis); and

(B) submit the report described in subsection (c)(1).

(2) REQUIREMENTS APPLICABLE TO ENTITIES ENTERING INTO CERTAIN AGREEMENTS.—An entity that enters into an agreement with a participant in the registry for the purpose of a carbon sequestration project shall not be required to comply with the requirements specified in paragraph (1) unless that entity is required to comply with the requirements by reason of an activity other than the agreement.

(c) REPORTS.—

(1) REQUIRED REPORT.—Not later than April 1 of the third calendar year that begins after the date of enactment of this Act, and not later than April 1 of each calendar year thereafter, subject to paragraph (3), an entity described in subsection (a) shall submit to each appropriate designated agency a report that describes, for the preceding calendar year, the entity-wide greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of each greenhouse gas emitted, expressed in terms of mass and in terms of the quantity of carbon dioxide equivalent;

(B) an estimate of the greenhouse gas emissions from fossil fuel combusted by products manufactured and sold by the entity in the previous calendar year, determined over the average lifetime of those products; and

(C) such other categories of emissions as the designated agency determines in the regulations promulgated under section 1104(c)(1) may be practicable and useful for the purposes of this title, such as—

(i) direct emissions from stationary sources;

(ii) indirect emissions from imported electricity, heat, and steam;

(iii) process and fugitive emissions; and

(iv) production or importation of greenhouse gases.

(2) VOLUNTARY REPORTING.—An entity described in subsection (a) may (along with establishing a baseline and reporting reductions under this section)—

(A) submit a report described in paragraph (1) before the date specified in that paragraph for the purposes of achieving and commoditizing greenhouse gas reductions through use of the registry; and

(B) submit to any designated agency, for inclusion in the registry, information that has been verified in accordance with regulations promulgated under section 1104(c)(1) and that relates to—

(i) with respect to the calendar year preceding the calendar year in which the information is submitted, and with respect to any greenhouse gas emitted by the entity—

(I) project reductions from facilities owned or controlled by the reporting entity in the United States;

(II) transfers of project reductions to and from any other entity;

(III) project reductions and transfers of project reductions outside the United States;

(IV) other indirect emissions that are not required to be reported under paragraph (1); and

(V) product use phase emissions;

(ii) with respect to greenhouse gas emission reductions activities of the entity that have been carried out during or after 1990, verified in accordance with regulations promulgated under section 1104(c)(1), and submitted to 1 or more designated agencies before the date that is 4 years after the date of enactment of this Act, any greenhouse gas emission reductions that have been reported or submitted by an entity under—

(I) section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)); or

(II) any other Federal or State voluntary greenhouse gas reduction program; and

(iii) any project or activity for the reduction of greenhouse gas emissions or sequestration of a greenhouse gas that is carried out by the entity, including a project or activity relating to—

(I) fuel switching;

(II) energy efficiency improvements;

(III) use of renewable energy;

(IV) use of combined heat and power systems;

(V) management of cropland, grassland, or grazing land;

(VI) a forestry activity that increases forest carbon stocks or reduces forest carbon emissions;

(VII) carbon capture and storage;

(VIII) methane recovery;

(IX) greenhouse gas offset investment; and

(X) any other practice for achieving greenhouse gas reductions as recognized by 1 or more designated agencies.

(3) EXEMPTIONS FROM REPORTING.—

(A) IN GENERAL.—If the Director of the Office of National Climate Change Policy determines under section 1108(b) that the reporting requirements under paragraph (1) shall apply to all entities (other than entities exempted by this paragraph), regardless of participation or nonparticipation in the registry, an entity shall be required to submit reports under paragraph (1) only if, in any calendar year after the date of enactment of this Act—

(i) the total greenhouse gas emissions of at least 1 facility owned by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); or

(ii)(I) the total quantity of greenhouse gases produced, distributed, or imported by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); and

(II) the entity is not a feedlot or other farming operation (as defined in section 101 of title 11, United States Code).

(B) ENTITIES ALREADY REPORTING.—

(i) IN GENERAL.—An entity that, as of the date of enactment of this Act, is required to report carbon dioxide emissions data to a Federal agency shall not be required to re-report that data for the purposes of this title.

(ii) REVIEW OF PARTICIPATION.—For the purpose of section 1108, emissions reported under clause (i) shall be considered to be reported by the entity to the registry.

(4) PROVISION OF VERIFICATION INFORMATION BY REPORTING ENTITIES.—Each entity that submits a report under this subsection shall provide information sufficient for each designated agency to which the report is submitted to verify, in accordance with measurement and verification methods and standards developed under section 1106, that the greenhouse gas report of the reporting entity—

(A) has been accurately reported; and

(B) in the case of each voluntary report under paragraph (2), represents—

(i) actual reductions in direct greenhouse gas emissions—

(I) relative to historic emission levels of the entity; and

(II) net of any increases in—

(aa) direct emissions; and

(bb) indirect emissions described in paragraph (1)(C)(ii); or

(ii) actual increases in net sequestration.

(5) FAILURE TO SUBMIT REPORT.—An entity that participates or has participated in the registry and that fails to submit a report required under this subsection shall be prohibited from including emission reductions reported to the registry in the calculation of the baseline of the entity in future years.

(6) INDEPENDENT THIRD-PARTY VERIFICATION.—To meet the requirements of this section and section 1106, a entity that is required to submit a report under this section may—

(A) obtain independent third-party verification; and

(B) present the results of the third-party verification to each appropriate designated agency.

(7) AVAILABILITY OF DATA.—

(A) IN GENERAL.—The designated agencies shall ensure, to the maximum extent practicable, that information in the database is—

(i) published;

(ii) accessible to the public; and

(iii) made available in electronic format on the Internet.

(B) EXCEPTION.—Subparagraph (A) shall not apply in any case in which the designated agencies determine that publishing or otherwise making available information described in that subparagraph poses a risk to national security.

(8) DATA INFRASTRUCTURE.—The designated agencies shall ensure, to the maximum extent practicable, that the database uses, and is integrated with, Federal, State, and regional greenhouse gas data collection and reporting systems in effect as of the date of enactment of this Act.

(9) ADDITIONAL ISSUES TO BE CONSIDERED.—In promulgating the regulations under section 1104(c)(1) and implementing the database, the designated agencies shall take into consideration a broad range of issues involved in establishing an effective database, including—

(A) the appropriate units for reporting each greenhouse gas;

(B) the data and information systems and measures necessary to identify, track, and verify greenhouse gas emission reductions in a manner that will encourage the development of private sector trading and exchanges;

(C) the greenhouse gas reduction and sequestration methods and standards applied in other countries, as applicable or relevant;

(D) the extent to which available fossil fuels, greenhouse gas emissions, and greenhouse gas production and importation data are adequate to implement the database;

(E) the differences in, and potential uniqueness of, the facilities, operations, and business and other relevant practices of persons and entities in the private and public sectors that may be expected to participate in the registry; and

(F) the need of the registry to maintain valid and reliable information on baselines of entities so that, in the event of any future action by Congress to require entities, individually or collectively, to reduce greenhouse gas emissions, Congress will be able—

(i) to take into account that information; and

(ii) to avoid enacting legislation that penalizes entities for achieving and reporting reductions.

(d) ANNUAL REPORT.—The designated agencies shall jointly publish an annual report that—

(1) describes the total greenhouse gas emissions and emission reductions reported to the database during the year covered by the report;

(2) provides entity-by-entity and sector-by-sector analyses of the emissions and emission reductions reported;

(3) describes the atmospheric concentrations of greenhouse gases; and

(4) provides a comparison of current and past atmospheric concentrations of greenhouse gases.

SEC. 1106. MEASUREMENT AND VERIFICATION.

(a) STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the designated agencies shall jointly develop comprehensive measurement and verification methods and standards to ensure a consistent and technically accurate record of greenhouse gas emissions, emission reductions, sequestration, and atmospheric concentrations for use in the registry.

(2) REQUIREMENTS.—The methods and standards developed under paragraph (1) shall address the need for—

(A) standardized measurement and verification practices for reports made by all entities participating in the registry, taking into account—

(i) protocols and standards in use by entities desiring to participate in the registry as of the date of development of the methods and standards under paragraph (1);

(ii) boundary issues, such as leakage and shifted use;

(iii) avoidance of double counting of greenhouse gas emissions and emission reductions; and

(iv) such other factors as the designated agencies determine to be appropriate;

(B) measurement and verification of actions taken to reduce, avoid, or sequester greenhouse gas emissions;

(C) in coordination with the Secretary of Agriculture, measurement of the results of the use of carbon sequestration and carbon recapture technologies, including—

(i) organic soil carbon sequestration practices; and

(ii) forest preservation and reforestation activities that adequately address the issues of permanence, leakage, and verification;

(D) such other measurement and verification standards as the Secretary of Commerce, the Secretary of Agriculture, the Administrator, and the Secretary of Energy determine to be appropriate; and

(E) other factors that, as determined by the designated agencies, will allow entities to adequately establish a fair and reliable measurement and reporting system.

(b) REVIEW AND REVISION.—The designated agencies shall periodically review, and revise as necessary, the methods and standards developed under subsection (a).

(c) PUBLIC PARTICIPATION.—The Secretary of Commerce shall—

(1) make available to the public for comment, in draft form and for a period of at least 90 days, the methods and standards developed under subsection (a); and

(2) after the 90-day period referred to in paragraph (1), in coordination with the Secretary of Energy, the Secretary of Agriculture, and the Administrator, adopt the methods and standards developed under subsection (a) for use in implementing the database.

(d) EXPERTS AND CONSULTANTS.—

(1) IN GENERAL.—The designated agencies may obtain the services of experts and consultants in the private and nonprofit sectors in accordance with section 3109 of title 5, United States Code, in the areas of greenhouse gas measurement, certification, and emission trading.

(2) AVAILABLE ARRANGEMENTS.—In obtaining any service described in paragraph (1), the designated agencies may use any available grant, contract, cooperative agreement, or other arrangement authorized by law.

SEC. 1107. INDEPENDENT REVIEWS.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to Congress a report that—

(1) describes the efficacy of the implementation and operation of the database; and

(2) includes any recommendations for improvements to this title and programs carried out under this title—

(A) to achieve a consistent and technically accurate record of greenhouse gas emissions, emission reductions, and atmospheric concentrations; and

(B) to achieve the purposes of this title.

(b) REVIEW OF SCIENTIFIC METHODS.—The designated agencies shall enter into an agreement with the National Academy of Sciences under which the National Academy of Sciences shall—

(1) review the scientific methods, assumptions, and standards used by the designated agencies in implementing this title;

(2) not later than 4 years after the date of enactment of this Act, submit to Congress a report that describes any recommendations for improving—

(A) those methods and standards; and

(B) related elements of the programs, and structure of the database, established by this title; and

(3) regularly review and update as appropriate the list of anthropogenic climate-forcing emissions with significant global warming potential described in section 1102(8)(G).

SEC. 1108. REVIEW OF PARTICIPATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, the Director of the Office of National Climate Change Policy shall determine whether the reports submitted to the registry under section 1105(c)(1) represent less than 60 percent of the national aggregate anthropogenic greenhouse gas emissions.

(b) INCREASED APPLICABILITY OF REQUIREMENTS.—If the Director of the Office of National Climate Change Policy determines under subsection (a) that less than 60 percent of the aggregate national anthropogenic greenhouse gas emissions are being reported to the registry—

(1) the reporting requirements under section 1105(c)(1) shall apply to all entities (except entities exempted under section 1105(c)(3)), regardless of any participation or nonparticipation by the entities in the registry; and

(2) each entity shall submit a report described in section 1105(c)(1)—

(A) not later than the earlier of—

(i) April 30 of the calendar year immediately following the year in which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); or

(ii) the date that is 1 year after the date on which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); and

(B) annually thereafter.

(c) RESOLUTION OF DISAPPROVAL.—For the purposes of this section, the determination of the Director of the Office of National Climate Change Policy under subsection (a) shall be considered to be a major rule (as defined in section 804(2) of title 5, United States Code) subject to the congressional disapproval procedure under section 802 of title 5, United States Code.

SEC. 1109. ENFORCEMENT.

If an entity that is required to report greenhouse gas emissions under section 1105(c)(1) or 1108 fails to comply with that requirement, the Attorney General may, at the request of the designated agencies, bring a civil action in United States district court against the entity to impose on the entity a civil penalty of not more than $25,000 for each day for which the entity fails to comply with that requirement.

SEC. 1110. REPORT ON STATUTORY CHANGES AND HARMONIZATION.

Not later than 3 years after the date of enactment of this Act, the President shall submit to Congress a report that describes any modifications to this title or any other provision of law that are necessary to improve the accuracy or operation of the database and related programs under this title.

SEC. 1111. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

DIVISION E—ENHANCING RESEARCH, DEVELOPMENT, AND TRAINING

TITLE XII—ENERGY RESEARCH AND DEVELOPMENT PROGRAMS

SEC. 1201. SHORT TITLE.

This division may be cited as the ''Energy Science and Technology Enhancement Act of 2003''.

SEC. 1202. FINDINGS.

The Congress finds the following:

(1) A coherent national energy strategy requires an energy research and development program that supports basic energy research and provides mechanisms to develop, demonstrate, and deploy new energy technologies in partnership with industry.

(2) An aggressive national energy research, development, demonstration, and technology deployment program is an integral part of a national climate change strategy, because it can reduce—

(A) United States energy intensity by 1.9 percent per year from 1999 to 2020;

(B) United States energy consumption in 2020 by 8 quadrillion Btu from otherwise expected levels; and

(C) United States carbon dioxide emissions from expected levels by 166 million metric tons in carbon equivalent in 2020.

(3) An aggressive national energy research, development, demonstration, and technology deployment program can help maintain domestic United States production of energy, increase United States hydrocarbon reserves by 14 percent, and lower natural gas prices by 20 percent, compared to estimates for 2020.

(4) An aggressive national energy research, development, demonstration, and technology deployment program is needed if United States suppliers and manufacturers are to compete in future markets for advanced energy technologies.

SEC. 1203. DEFINITIONS.

In this title:

(1) DEPARTMENT.—The term ''Department'' means the Department of Energy.

(2) DEPARTMENTAL MISSION.—The term ''departmental mission'' means any of the functions vested in the Secretary of Energy by the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) or other law.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));

(4) NATIONAL LABORATORY.—The term ''National Laboratory'' means any of the following multipurpose laboratories owned by the Department of Energy—

(A) Argonne National Laboratory;

(B) Brookhaven National Laboratory;

(C) Idaho National Engineering and Environmental Laboratory;

(D) Lawrence Berkeley National Laboratory;

(E) Lawrence Livermore National Laboratory;

(F) Los Alamos National Laboratory;

(G) National Energy Technology Laboratory;

(H) National Renewable Energy Laboratory;

(I) Oak Ridge National Laboratory;

(J) Pacific Northwest National Laboratory; or

(K) Sandia National Laboratory.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(6) TECHNOLOGY DEPLOYMENT.—The term ''technology deployment'' means activities to promote acceptance and utilization of technologies in commercial application, including activities undertaken pursuant to section 7 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5906) or section 6 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (42 U.S.C. 12007).

SEC. 1204. CONSTRUCTION WITH OTHER LAWS.

Except as otherwise provided in this title and title XIV, the Secretary shall carry out the research, development, demonstration, and technology deployment programs authorized by this title in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.), or any other Act under which the Secretary is authorized to carry out such activities.

Subtitle A—Energy Efficiency

SEC. 1211. ENHANCED ENERGY EFFICIENCY RESEARCH AND DEVELOPMENT.

(a) PROGRAM DIRECTION.—The Secretary shall conduct balanced energy research, development,

demonstration, and technology deployment programs to enhance energy efficiency in buildings, industry, power technologies, and transportation.

(b) PROGRAM GOALS.—

(1) ENERGY-EFFICIENT HOUSING.—The goal of the energy-efficient housing program shall be to develop, in partnership with industry, enabling technologies (including lighting technologies), designs, production methods, and supporting activities that will, by 2010—

(A) cut the energy use of new housing by 50 percent, and

(B) reduce energy use in existing homes by 30 percent.

(2) INDUSTRIAL ENERGY EFFICIENCY.—The goal of the industrial energy efficiency program shall be to develop, in partnership with industry, enabling technologies, designs, production methods, and supporting activities that will, by 2010, enable energy-intensive industries such as the following industries to reduce their energy intensity by at least 25 percent—

(A) the wood product manufacturing industry;

(B) the pulp and paper industry;

(C) the petroleum and coal products manufacturing industry;

(D) the mining industry;

(E) the chemical manufacturing industry;

(F) the glass and glass product manufacturing industry;

(G) the iron and steel mills and ferroalloy manufacturing industry;

(H) the primary aluminum production industry;

(I) the foundries industry; and

(J) United States agriculture.

(3) TRANSPORTATION ENERGY EFFICIENCY.—The goal of the transportation energy efficiency program shall be to develop, in partnership with industry, technologies that will enable the achievement—

(A) by 2010, passenger automobiles with a fuel economy of 80 miles per gallon;

(B) by 2010, light trucks (classes 1 and 2a) with a fuel economy of 60 miles per gallon;

(C) by 2010, medium trucks and buses (classes 2b through 6 and class 8 transit buses) with a fuel economy, in ton-miles per gallon, that is three times that of year 2000 equivalent vehicles;

(D) by 2010, heavy trucks (classes 7 and 8) with a fuel economy, in ton-miles per gallon, that is two times that of year 2000 equivalent vehicles; and

(E) by 2015, the production of fuel-cell powered passenger vehicles with a fuel economy of 110 miles per gallon.

(4) ENERGY EFFICIENT DISTRIBUTED GENERATION.—The goals of the energy efficient on-site generation program shall be to help remove environmental and regulatory barriers to on-site, or distributed, generation and combined heat and power by developing technologies by 2015 that achieve—

(A) electricity generating efficiencies greater than 40 percent for on-site generation technologies based upon natural gas, including fuel cells, microturbines, reciprocating engines and industrial gas turbines;

(B) combined heat and power total (electric and thermal) efficiencies of more than 85 percent;

(C) fuel flexibility to include hydrogen, biofuels and natural gas;

(D) near zero emissions of pollutants that form smog and acid rain;

(E) reduction of carbon dioxide emissions by at least 40 percent;

(F) packaged system integration at end user facilities providing complete services in heating, cooling, electricity and air quality; and

(G) increased reliability for the consumer and greater stability for the national electricity grid.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out research, development, demonstration, and technology deployment activities under this subtitle—

(1) $700,000,000 for fiscal year 2003;

(2) $784,000,000 for fiscal year 2004;

(3) $878,000,000 for fiscal year 2005; and

(4) $983,000,000 for fiscal year 2006.

(d) LIMITATION ON USE OF FUNDS.—None of the funds authorized to be appropriated in subsection (c) may be used for the following programs of the Department—

(1) Weatherization Assistance Program;

(2) State Energy Program; or

(3) Federal Energy Management Program.

SEC. 1212. ENERGY EFFICIENCY SCIENCE INITIATIVE.

(a) ESTABLISHMENT AND AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1211(c), there are authorized to be appropriated not more than $50,000,000 in any fiscal year, for an Energy Efficiency Science Initiative to be managed by the Assistant Secretary in the Department with responsibility for energy conservation under section 203(a)(9) of the Department of Energy Organization Act (42 U.S.C. 7133(a)(9)), in consultation with the Director of the Office of Science, for grants to be competitively awarded and subject to peer review for research relating to energy efficiency.

(b) REPORT.—The Secretary of Energy shall submit to the Committee on Science and the Committee on Appropriations of the United States House of Representatives, and to the Committee on Energy and Natural Resources and the Committee on Appropriations of the United States Senate, an annual report on the activities of the Energy Efficiency Science Initiative, including a description of the process used to award the funds and an explanation of how the research relates to energy efficiency.

SEC. 1213. NEXT GENERATION LIGHTING INITIATIVE.

(a) ESTABLISHMENT.—There is established in the Department a Next Generation Lighting Initiative to research, develop, and conduct demonstration activities on advanced solid-state lighting technologies based on white light emitting diodes.

(b) OBJECTIVES.—

(1) IN GENERAL.—The objectives of the initiative shall be to develop, by 2011, advanced solid-state lighting technologies based on white light emitting diodes that, compared to incandescent and fluorescent lighting technologies, are—

(A) longer lasting;

(B) more energy-efficient; and

(C) cost-competitive.

(2) INORGANIC WHITE LIGHT EMITTING DIODE.—The objective of the initiative with respect to inorganic white light emitting diodes shall be to develop an inorganic white light emitting diode that has an efficiency of 160 lumens per watt and a 10-year lifetime.

(3) ORGANIC WHITE LIGHT EMITTING DIODE.—The objective of the initiative with respect to organic white light emitting diodes shall be to develop an organic white light emitting diode with an efficiency of 100 lumens per watt with a 5-year lifetime that—

(A) illuminates over a full color spectrum;

(B) covers large areas over flexible surfaces; and

(C) does not contain harmful pollutants typical of fluorescent lamps such as mercury.

(c) CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall initiate and manage basic and manufacturing-related research on advanced solid-state lighting technologies based on white light emitting diodes for the initiative, in cooperation with the Next Generation Lighting Initiative Consortium.

(2) COMPOSITION.—The consortium shall be composed of firms, national laboratories, and other entities so that the consortium is representative of the United States solid-state lighting research, development, and manufacturing expertise as a whole.

(3) FUNDING.—The consortium shall be funded by—

(A) participation fees; and

(B) grants provided under subsection (e)(1).

(4) ELIGIBILITY.—To be eligible to receive a grant under subsection (e)(1), the consortium shall—

(A) enter into a consortium participation agreement that—

(i) is agreed to by all participants; and

(ii) describes the responsibilities of participants, participation fees, and the scope of research activities; and

(B) develop an annual program plan.

(5) INTELLECTUAL PROPERTY.—Participants in the consortium shall have royalty-free nonexclusive rights to use intellectual property derived from consortium research conducted under subsection (e)(1).

(d) PLANNING BOARD.—

(1) IN GENERAL.—Not later than 90 days after the establishment of the consortium, the Secretary shall establish and appoint the members of a planning board, to be known as the ''Next Generation Lighting Initiative Planning Board'', to assist the Secretary in carrying out this section.

(2) COMPOSITION.—The planning board shall be composed of—

(A) four members from universities, national laboratories, and other individuals with expertise in advanced solid-state lighting and technologies based on white light emitting diodes; and

(B) three members from a list of not less than six nominees from industry submitted by the consortium.

(3) STUDY.—

(A) IN GENERAL.—Not later than 90 days after the date on which the Secretary appoints members to the planning board, the planning board shall complete a study on strategies for the development and implementation of advanced solid-state lighting technologies based on white light emitting diodes.

(B) REQUIREMENTS.—The study shall develop a comprehensive strategy to implement, through the initiative, the use of white light emitting diodes to increase energy efficiency and enhance United States competitiveness.

(C) IMPLEMENTATION.—As soon as practicable after the study is submitted to the Secretary, the Secretary shall implement the initiative in accordance with the recommendations of the planning board.

(4) TERMINATION.—The planning board shall terminate upon completion of the study under paragraph (3).

(e) GRANTS.—

(1) FUNDAMENTAL RESEARCH.—The Secretary, through the consortium, shall make grants to conduct basic and manufacturing-related research related to advanced solid-state lighting technologies based on white light emitting diode technologies.

(2) TECHNOLOGY DEVELOPMENT AND DEMONSTRATION.—The Secretary shall enter into grants, contracts, and cooperative agreements to conduct or promote technology research, development, or demonstration activities. In providing funding under this paragraph, the Secretary shall give preference to participants in the consortium.

(3) CONTINUING ASSESSMENT.—The consortium, in collaboration with the Secretary, shall formulate annual operating and performance objectives, develop technology roadmaps, and recommend research and development priorities for the initiative. The Secretary may also establish or utilize advisory committees, or enter into appropriate arrangements with the National Academy of Sciences, to conduct periodic reviews of the initiative. The Secretary shall consider the results of such assessment and review activities in making funding decisions under paragraphs (1) and (2) of this subsection.

(4) TECHNICAL ASSISTANCE.—The National Laboratories shall cooperate with and provide technical assistance to persons carrying out projects under the initiative.

(5) AUDITS.—

(A) IN GENERAL.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds made available under this section have been expended in a manner that is consistent with the objectives under subsection (b) and, in the case of funds made available to the consortium, the annual program plan of the consortium under subsection (c)(4)(B).

(B) REPORTS.—The auditor shall submit to Congress, the Secretary, and the Comptroller General of the United States an annual report containing the results of the audit.

(6) APPLICABLE LAW.—Grants, contracts, and cooperative agreements under this section shall not be subject to the Federal Acquisition Regulation.

(f) PROTECTION OF INFORMATION.—Information obtained by the Federal Government on a confidential basis under this section shall be considered to constitute trade secrets and commercial or financial information obtained from a person and privileged or confidential under section 552(b)(4) of title 5, United States Code.

(g) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized under section 1211(c), there are authorized to be appropriated for activities under this section $50,000,000 for each of fiscal years 2003 through 2011.

(h) DEFINITIONS.—In this section:

(1) ADVANCED SOLID-STATE LIGHTING.—The term ''advanced solid-state lighting'' means a semiconducting device package and delivery system that produces white light using externally applied voltage.

(2) CONSORTIUM.—The term ''consortium'' means the Next Generation Lighting Initiative Consortium under subsection (c).

(3) INITIATIVE.—The term ''initiative'' means the Next Generation Lighting Initiative established under subsection (a).

(4) INORGANIC WHITE LIGHT EMITTING DIODE.—The term ''inorganic white light emitting diode'' means an inorganic semiconducting package that produces white light using externally applied voltage.

(5) ORGANIC WHITE LIGHT EMITTING DIODE.—The term ''organic white light emitting diode'' means an organic semiconducting compound that produces white light using externally applied voltage.

(6) WHITE LIGHT EMITTING DIODE.—The term ''white light emitting diode'' means—

(A) an inorganic white light emitting diode; or

(B) an organic white light emitting diode.

SEC. 1214. RAILROAD EFFICIENCY.

(a) ESTABLISHMENT.—The Secretary shall, in cooperation with the Secretaries of Transportation and Defense, and the Administrator of the Environmental Protection Agency, establish a public-private research partnership involving the Federal Government, railroad carriers, locomotive manufacturers, and the Association of American Railroads. The goal of the initiative shall include developing and demonstrating locomotive technologies that increase fuel economy, reduce emissions, improve safety, and lower costs.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the requirements of this section $60,000,000 for fiscal year 2003 and $70,000,000 for fiscal year 2004.

SEC. 1215. HIGH POWER DENSITY INDUSTRY PROGRAM.

The Secretary shall establish a comprehensive research, development, demonstration and deployment program to improve energy efficiency of high power density facilities, including data centers, server farms, and telecommunications facilities. Such program shall consider technologies that provide significant improvement in thermal controls, metering, load management, peak load reduction, or the efficient cooling of electronics.

SEC. 1216. RESEARCH REGARDING PRECIOUS METAL CATALYSIS.

The Secretary of Energy may, for the purpose of developing improved industrial and automotive catalysts, carry out research in the use of precious metals (excluding platinum, palladium, and rhodium) in catalysis directly, through national laboratories, or through grants to or cooperative agreements or contracts with public or nonprofit entities. There are authorized to be appropriated to carry out this section such sums as are necessary for fiscal years 2003 through 2006.

Subtitle B—Renewable Energy

SEC. 1221. ENHANCED RENEWABLE ENERGY RESEARCH AND DEVELOPMENT.

(a) PROGRAM DIRECTION.—The Secretary shall conduct balanced energy research, development, demonstration, and technology deployment programs to enhance the use of renewable energy.

(b) PROGRAM GOALS.—

(1) WIND POWER.—The goals of the wind power program shall be to develop, in partnership with industry, a variety of advanced wind turbine designs and manufacturing technologies that are cost-competitive with fossil-fuel generated electricity, with a focus on developing advanced low wind speed technologies that, by 2007, will enable the expanding utilization of widespread class 3 and 4 winds.

(2) PHOTOVOLTAICS.—The goal of the photovoltaic program shall be to develop, in partnership with industry, total photovoltaic systems with installed costs of $4,000 per peak kilowatt by 2005 and $2,000 per peak kilowatt by 2015.

(3) SOLAR THERMAL ELECTRIC SYSTEMS.—The goal of the solar thermal electric systems program shall be to develop, in partnership with industry, solar power technologies (including baseload solar power) that are competitive with fossil-fuel generated electricity by 2015, by combining high-efficiency and high-temperature receivers with advanced thermal storage and power cycles.

(4) BIOMASS-BASED POWER SYSTEMS.—The goal of the biomass program shall be to develop, in partnership with industry, integrated power-generating systems, advanced conversion, and feedstock technologies capable of producing electric power that is cost-competitive with fossil-fuel generated electricity by 2010, together with the production of fuels, chemicals, and other products under paragraph (6).

(5) GEOTHERMAL ENERGY.—The goal of the geothermal program shall be to develop, in partnership with industry, technologies and processes based on advanced hydrothermal systems and advanced heat and power systems, including geothermal heat pump technology, with a specific focus on—

(A) improving exploration and characterization technology to increase the probability of drilling successful wells from 20 percent to 40 percent by 2006;

(B) reducing the cost of drilling by 2008 to an average cost of $150 per foot; and

(C) developing enhanced geothermal systems technology with the potential to double the useable geothermal resource base.

(6) BIOFUELS.—The goal of the biofuels program shall be to develop, in partnership with industry—

(A) advanced biochemical and thermochemical conversion technologies capable of making liquid and gaseous fuels from cellulosic feedstocks that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell vehicles by 2010; and

(B) advanced biotechnology processes capable of making biofuels, biobased polymers, and chemicals, with particular emphasis on the development of biorefineries that use enzyme based processing systems.

For purposes of this paragraph, the term ''cellulosic feedstock'' means any portion of a food crop not normally used in food production or any nonfood crop grown for the purpose of producing biomass feedstock.

(7) HYDROGEN-BASED ENERGY SYSTEMS.—The goals of the hydrogen program shall be to support research and development on technologies for production, storage, and use of hydrogen, including fuel cells and, specifically, fuel-cell vehicle development activities under section 1211.

(8) HYDROPOWER.—The goal of the hydropower program shall be to develop, in partnership with industry, a new generation of turbine technologies that are less damaging to fish and aquatic ecosystems.

(9) ELECTRIC ENERGY SYSTEMS AND STORAGE.—The goals of the electric energy and storage program shall be to develop, in partnership with industry—

(A) generators and transmission, distribution, and storage systems that combine high capacity with high efficiency;

(B) technologies to interconnect distributed energy resources with electric power systems, comply with any national interconnection standards, have a minimum 10-year useful life;

(C) advanced technologies to increase the average efficiency of electric transmission facilities in rural and remote areas, giving priority for demonstrations to advanced transmission technologies that are being or have been field tested;

(D) the use of new transmission technologies, including flexible alternating current transmission systems, composite conductor materials, advanced protection devices, controllers, and other cost-effective methods and technologies;

(E) the use of superconducting materials in power delivery equipment such as transmission and distribution cables, transformers, and generators;

(F) energy management technologies for enterprises with aggregated loads and distributed generation, such as power parks;

(G) economic and system models to measure the costs and benefits of improved system performance;

(H) hybrid distributed energy systems to optimize two or more distributed or on-site generation technologies; and

(I) real-time transmission and distribution system control technologies that provide for continual exchange of information between generation, transmission, distribution, and end-user facilities.

(c) SPECIAL PROJECTS.—In carrying out this section, the Secretary shall demonstrate—

(1) the use of advanced wind power technology, biomass, geothermal energy systems, and other renewable energy technologies to assist in delivering electricity to rural and remote locations;

(2) the combined use of wind power and coal gasification technologies; and

(3) the use of high temperature superconducting technology in projects to demonstrate the development of superconductors that enhance the reliability, operational flexibility, or power-carrying capability of electric transmission systems or increase the electrical or operational efficiency of electric energy generation, transmission, distribution and storage systems.

(d) FINANCIAL ASSISTANCE TO RURAL AREAS.—In carrying out special projects under subsection (c), the Secretary may provide financial assistance to rural electric cooperatives and other rural entities.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out research, development, demonstration, and technology deployment activities under this subtitle—

(1) $500,000,000 for fiscal year 2003;

(2) $595,000,000 for fiscal year 2004;

(3) $683,000,000 for fiscal year 2005; and

(4) $733,000,000 for fiscal year 2006, of which $100,000,000 may be allocated to meet the goals of subsection (b)(1).

SEC. 1222. BIOENERGY PROGRAMS.

(a) PROGRAM DIRECTION.—The Secretary shall carry out research, development, demonstration, and technology development activities related to bioenergy, including programs under paragraphs (4) and (6) of section 1221(b).

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) BIOPOWER ENERGY SYSTEMS.—From amounts authorized under section 1221(e), there are authorized to be appropriated to the Secretary for biopower energy systems—

(A) $60,300,000 for fiscal year 2003;

(B) $69,300,000 for fiscal year 2004;

(C) $79,600,000 for fiscal year 2005; and

(D) $86,250,000 for fiscal year 2006.

(2) BIOFUELS ENERGY SYSTEMS.—From amounts authorized under section 1221(e), there are authorized to be appropriated to the Secretary for biofuels energy systems—

(A) $57,500,000 for fiscal year 2003;

(B) $66,125,000 for fiscal year 2004;

(C) $76,000,000 for fiscal year 2005; and

(D) $81,400,000 for fiscal year 2006.

(3) INTEGRATED BIOENERGY RESEARCH AND DEVELOPMENT.—The Secretary may use funds authorized under paragraph (1) or (2) for programs, projects, or activities that integrate applications for both biopower and biofuels, including cross-cutting research and development in feedstocks and economic analysis.

SEC. 1223. HYDROGEN RESEARCH AND DEVELOPMENT.

(a) SHORT TITLE.—This section may be cited as the ''Hydrogen Future Act of 2003''.

(b) PURPOSES.—Section 102(b) of the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12401(b)) is amended by striking paragraphs (2) and (3) and inserting the following:

''(2) to direct the Secretary to develop a program of technology assessment, information transfer, and education in which Federal agencies, members of the transportation, energy, and other industries, and other entities may participate;

''(3) to develop methods of hydrogen production that minimize production of greenhouse gases, including developing—

''(A) efficient production from nonrenewable resources; and

''(B) cost-effective production from renewable resources such as biomass, geothermal, wind, and solar energy; and

''(4) to foster the use of hydrogen as a major energy source, including developing the use of hydrogen in—

''(A) isolated villages, islands, and communities in which other energy sources are not available or are very expensive; and

''(B) foreign economic development, to avoid environmental damage from increased fossil fuel use.''.

(c) REPORT TO CONGRESS.—Section 103 of the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12402) is amended—

(1) in subsection (a), by striking ''January 1, 1999,'' and inserting ''1 year after the date of enactment of the Hydrogen Future Act of 2003, and biennially thereafter,'';

(2) in subsection (b), by striking paragraphs (1) and (2) and inserting the following:

''(1) an analysis of hydrogen-related activities throughout the United States Government to identify productive areas for increased intragovernmental collaboration;

''(2) recommendations of the Hydrogen Technical Advisory Panel established by section 108 for any improvements in the program that are needed, including recommendations for additional legislation; and

''(3) to the extent practicable, an analysis of State and local hydrogen-related activities.''; and

(3) by adding at the end the following:

''(c) COORDINATION PLAN.—The report under subsection (a) shall be based on a comprehensive coordination plan for hydrogen energy prepared by the Secretary in consultation with other Federal agencies.''.

(d) HYDROGEN RESEARCH AND DEVELOPMENT.—Section 104 of the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12403) is amended—

(1) in subsection (b)(1), by striking ''marketplace;'' and inserting ''marketplace, including foreign markets, particularly where an energy infrastructure is not well developed;'';

(2) in subsection (e), by striking ''this chapter'' and inserting ''this Act'';

(3) by striking subsection (g) and inserting the following:

''(g) COST SHARING.—

''(1) INABILITY TO FUND ENTIRE COST.—The Secretary shall not consider a proposal submitted by a person from industry unless the proposal contains a certification that—

''(A) reasonable efforts to obtain non-Federal funding in the amount necessary to pay 100 percent of the cost of the project have been made; and

''(B) non-Federal funding in that amount could not reasonably be obtained.

''(2) NON-FEDERAL SHARE.—

''(A) IN GENERAL.—The Secretary shall require a commitment from non-Federal sources of at least 25 percent of the cost of the project.

''(B) REDUCTION OR ELIMINATION.—The Secretary may reduce or eliminate the cost-sharing requirement under subparagraph (A) for the proposed research and development project, including for technical analyses, economic analyses, outreach activities, and educational programs, if the Secretary determines that reduction or elimination is necessary to achieve the objectives of this Act.'';

(4) in subsection (i), by striking ''this chapter'' and inserting ''this Act''.

(e) DEMONSTRATIONS.—Section 105 of the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12404) is amended by striking subsection (c) and inserting the following:

''(c) NON-FEDERAL SHARE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section.

''(2) REDUCTION.—The Secretary may reduce the non-Federal requirement under paragraph (1) if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this Act.''.

(f) TECHNOLOGY TRANSFER.—Section 106 of the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12405) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by striking ''The Secretary shall conduct a program designed to accelerate wider application'' and inserting the following:

''(1) IN GENERAL.—The Secretary shall conduct a program designed to—

''(A) accelerate wider application''; and

(ii) by striking ''private sector'' and inserting ''private sector; and

''(B) accelerate wider application of hydrogen technologies in foreign countries to increase the global market for the technologies and foster global economic development without harmful environmental effects.''; and

(B) in the second sentence, by striking ''The Secretary'' and inserting the following:

''(2) ADVICE AND ASSISTANCE.—The Secretary''; and

(2) in subsection (b)—

(A) in paragraph (2), by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and indenting appropriately;

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(C) by striking ''The Secretary, in'' and inserting the following:

''(1) IN GENERAL.—The Secretary, in'';

(D) by striking ''The information'' and inserting the following:

''(2) ACTIVITIES.—The information''; and

(E) in paragraph (1) (as designated by subparagraph (C))—

(i) in subparagraph (A) (as redesignated by subparagraph (B)), by striking ''an inventory'' and inserting ''an update of the inventory''; and

(ii) in subparagraph (B) (as redesignated by subparagraph (B)), by striking ''develop'' and all that follows through ''to improve'' and inserting ''develop with the National Aeronautics and Space Administration, the Department of Energy, other Federal agencies as appropriate, and industry, an information exchange program to improve''.

(g) TECHNICAL PANEL REVIEW.—

(1) IN GENERAL.—Section 108 of the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12407) is amended—

(A) in subsection (b)—

(i) by striking ''(b) MEMBERSHIP.—The technical panel shall be appointed'' and inserting the following:

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The technical panel shall be comprised of not fewer than 9 nor more than 15 members appointed'';

(ii) by striking the second sentence and inserting the following:

''(2) TERMS.—

''(A) IN GENERAL.—The term of a member of the technical panel shall be not more than 3 years.

''(B) STAGGERED TERMS.—The Secretary may appoint members of the technical panel in a manner that allows the terms of the members serving at any time to expire at spaced intervals so as to ensure continuity in the functioning of the technical panel.

''(C) REAPPOINTMENT.—A member of the technical panel whose term expires may be reappointed.''; and

(iii) by striking ''The technical panel shall have a chairman,'' and inserting the following:

''(3) CHAIRPERSON.—The technical panel shall have a chairperson,''; and

(B) in subsection (d)—

(i) in the matter preceding paragraph (1), by striking ''the following items'';

(ii) in paragraph (1), by striking ''and'' at the end;

(iii) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(3) the plan developed by the interagency task force under section 202(b) of the Hydrogen Future Act of 1996.''.

(2) NEW APPOINTMENTS.—Not later than 180 days after the date of enactment of this Act, the Secretary—

(A) shall review the membership composition of the Hydrogen Technical Advisory Panel; and

(B) may appoint new members consistent with the amendments made by subsection (a).

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 109 of the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12408) is amended—

(1) in paragraph (8), by striking ''and'';

(2) in paragraph (9), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(10) $65,000,000 for fiscal year 2003;

''(11) $70,000,000 for fiscal year 2004;

''(12) $75,000,000 for fiscal year 2005; and

''(13) $80,000,000 for fiscal year 2006.''.

(i) FUEL CELLS.—

(1) INTEGRATION OF FUEL CELLS WITH HYDROGEN PRODUCTION SYSTEMS.—Section 201 of the Hydrogen Future Act of 1996 is amended—

(A) in subsection (a) by striking ''(a) Not later than 180 days after the date of enactment of this section, and subject'' and inserting ''(a) IN GENERAL.—Subject'';

(B) by striking ''with—'' and all that follows and inserting ''into Federal, State, and local government facilities for stationary and transportation applications.'';

(C) in subsection (b), by striking ''gas is'' and inserting ''basis'';

(D) in subsection (c)(2), by striking ''systems described in subsections (a)(1) and (a)(2)'' and inserting ''projects proposed''; and

(E) by striking subsection (d) and inserting the following:

''(d) NON-FEDERAL SHARE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section.

''(2) REDUCTION.—The Secretary may reduce the non-Federal requirement under paragraph (1) if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this Act.''.

(2) COOPERATIVE AND COST-SHARING AGREEMENTS; INTEGRATION OF TECHNICAL INFORMATION.—Title II of the Hydrogen Future Act of 1996 (42 U.S.C. 12403 note; Public Law 104–271) is amended by striking section 202 and inserting the following:

''SEC. 202. INTERAGENCY TASK FORCE.

''(a) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this section, the Secretary shall establish an interagency task force led by a Deputy Assistant Secretary of the Department of Energy and comprised of representatives of—

''(1) the Office of Science and Technology Policy;

''(2) the Department of Transportation;

''(3) the Department of Defense;

''(4) the Department of Commerce (including the National Institute for Standards and Technology);

''(5) the Environmental Protection Agency;

''(6) the National Aeronautics and Space Administration; and

''(7) other agencies as appropriate.

''(b) DUTIES.—

''(1) IN GENERAL.—The task force shall develop a plan for carrying out this title.

''(2) FOCUS OF PLAN.—The plan shall focus on development and demonstration of integrated systems and components for—

''(A) hydrogen production, storage, and use in Federal, State, and local government buildings and vehicles;

''(B) hydrogen-based infrastructure for buses and other fleet transportation systems that include zero-emission vehicles; and

''(C) hydrogen-based distributed power generation, including the generation of combined heat, power, and hydrogen.

''SEC. 203. COOPERATIVE AND COST-SHARING AGREEMENTS.

''The Secretary shall enter into cooperative and cost-sharing agreements with Federal, State, and local agencies for participation by the agencies in demonstrations at facilities administered by the agencies, with the aim of integrating high efficiency hydrogen systems using fuel cells into the facilities to provide immediate benefits and promote a smooth transition to hydrogen as an energy source.

''SEC. 204. INTEGRATION AND DISSEMINATION OF TECHNICAL INFORMATION.

''The Secretary shall—

''(1) integrate all the technical information that becomes available as a result of development and demonstration projects under this title;

''(2) make the information available to all Federal and State agencies for dissemination to all interested persons; and

''(3) foster the exchange of generic, nonproprietary information and technology developed under this title among industry, academia, and Federal, State, and local governments, to help the United States economy attain the economic benefits of the information and technology.

''SEC. 205. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated, for activities under this title—

''(1) $25,000,000 for fiscal year 2003;

''(2) $30,000,000 for fiscal year 2004;

''(3) $35,000,000 for fiscal year 2005; and

''(4) $40,000,000 for fiscal year 2006.''.

Subtitle C—Fossil Energy

SEC. 1231. ENHANCED FOSSIL ENERGY RESEARCH AND DEVELOPMENT.

(a) PROGRAM DIRECTION.—The Secretary shall conduct a balanced energy research, development, demonstration, and technology deployment program to enhance fossil energy.

(b) PROGRAM GOALS.—

(1) CORE FOSSIL RESEARCH AND DEVELOPMENT.—The goals of the core fossil research and development program shall be to reduce emissions from fossil fuel use by developing technologies, including precombustion technologies, by 2015 with the capability of realizing—

(A) electricity generating efficiencies of 60 percent for coal and 75 percent for natural gas;

(B) combined heat and power thermal efficiencies of more than 85 percent;

(C) fuels utilization efficiency of 75 percent for the production of liquid transportation fuels from coal;

(D) near zero emissions of mercury and of emissions that form fine particles, smog, and acid rain;

(E) reduction of carbon dioxide emissions by at least 40 percent through efficiency improvements and 100 percent with sequestration; and

(F) improved reliability, efficiency, reductions of air pollutant emissions, or reductions in solid waste disposal requirements.

(2) OFFSHORE OIL AND NATURAL GAS RESOURCES.—The goal of the offshore oil and natural gas resources program shall be to develop technologies to—

(A) extract methane hydrates in coastal waters of the United States, and

(B) develop natural gas and oil reserves in the ultra-deepwater of the Central and Western Gulf of Mexico.

(3) ONSHORE OIL AND NATURAL GAS RESOURCES.—The goal of the onshore oil and natural gas resources program shall be to advance the science and technology available to domestic onshore petroleum producers, particularly independent operators, through—

(A) advances in technology for exploration and production of domestic petroleum resources, particularly those not accessible with current technology;

(B) improvement in the ability to extract hydrocarbons from known reservoirs and classes of reservoirs; and

(C) development of technologies and practices that reduce the threat to the environment from petroleum exploration and production and decrease the cost of effective environmental compliance.

(4) TRANSPORTATION FUELS.—The goals of the transportation fuels program shall be to increase the price elasticity of oil supply and demand by focusing research on—

(A) reducing the cost of producing transportation fuels from coal and natural gas; and

(B) indirect liquefaction of coal and biomass.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary for carrying out research, development, demonstration, and technology deployment activities under this section—

(A) $485,000,000 for fiscal year 2003;

(B) $508,000,000 for fiscal year 2004;

(C) $532,000,000 for fiscal year 2005; and

(D) $558,000,000 for fiscal year 2006.

(2) LIMITS ON USE OF FUNDS.—None of the funds authorized in paragraph (1) may be used for—

(A) fossil energy environmental restoration;

(B) import/export authorization;

(C) program direction; or

(D) general plant projects.

(3) COAL-BASED PROJECTS.—The coal-based projects funded under this section shall be consistent with the goals in subsection (b). The program shall emphasize carbon capture and sequestration technologies and gasification technologies, including gasification combined cycle, gasification fuel cells, gasification co-production, hybrid gasification/combustion, or other technology with the potential to address the goals in subparagraphs (D) or (E) of subsection (b)(1).

SEC. 1232. POWER PLANT IMPROVEMENT INITIATIVE.

(a) PROGRAM DIRECTION.—The Secretary shall conduct a balanced energy research, development, demonstration, and technology deployment program to demonstrate commercial applications of advanced lignite and coal-based technologies applicable to new or existing power plants (including co-production plants) that advance the efficiency, environmental performance, and cost-competitiveness substantially beyond technologies that are in operation or have been demonstrated by the date of enactment of this subtitle.

(b) TECHNICAL MILESTONES.—

(1) IN GENERAL.—The Secretary shall set technical milestones specifying efficiency and emissions levels that projects shall be designed to achieve. The milestones shall become more restrictive over the life of the program.

(2) 2010 EFFICIENCY MILESTONES.—The milestones shall be designed to achieve by 2010 interim thermal efficiency of—

(A) forty-five percent for coal of more than 9,000 Btu;

(B) forty-four percent for coal of 7,000 to 9,000 Btu; and

(C) forty-two percent for coal of less than 7,000 Btu.

(3) 2020 EFFICIENCY MILESTONES.—The milestones shall be designed to achieve by 2020 thermal efficiency of—

(A) sixty percent for coal of more than 9,000 Btu;

(B) fifty-nine percent for coal of 7,000 to 9,000 Btu; and

(C) fifty-seven percent for coal of less than 7,000 Btu.

(4) EMISSIONS MILESTONES.—The milestones shall include near zero emissions of mercury and greenhouse gases and of emissions that form fine particles, smog, and acid rain.

(5) REGIONAL AND QUALITY DIFFERENCES.—The Secretary may consider regional and quality differences in developing the efficiency milestones.

(c) PROJECT CRITERIA.—The demonstration activities proposed to be conducted at a new or existing coal-based electric generation unit having a nameplate rating of not less than 100 megawatts, excluding a co-production plant, shall include at least one of the following—

(1) a means of recycling or reusing a significant portion of coal combustion wastes produced by coal-based generating units, excluding practices that are commercially available by the date of enactment of this subtitle;

(2) a means of capture and sequestering emissions, including greenhouse gases, in a manner that is more effective and substantially below the cost of technologies that are in operation or that have been demonstrated by the date of enactment of this subtitle;

(3) a means of controlling sulfur dioxide and nitrogen oxide or mercury in a manner that improves environmental performance beyond technologies that are in operation or that have been demonstrated by the date of enactment of this subtitle—

(A) in the case of an existing unit, achieve an overall thermal design efficiency improvement compared to the efficiency of the unit as operated, of not less than—

(i) 7 percent for coal of more than 9,000 Btu;

(ii) 6 percent for coal of 7,000 to 9,000 Btu; or

(iii) 4 percent for coal of less than 7,000 Btu; or

(B) in the case of a new unit, achieve the efficiency milestones set for in subsection (b) compared to the efficiency of a typical unit as operated on the date of enactment of this subtitle,

before any retrofit, repowering, replacement, or installation.

(d) STUDY.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of the Interior, and interested entities (including coal producers, industries using coal, organizations to promote coal or advanced coal technologies, environmental organizations, and organizations representing workers), shall conduct an assessment that identifies performance criteria that would be necessary for coal-based technologies to meet, to enable future reliance on coal in an environmentally sustainable manner for electricity generation, use as a chemical feedstock, and use as a transportation fuel.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary for carrying out activities under this section $200,000,000 for each of fiscal years 2003 through 2011.

(2) LIMITATION ON FUNDING OF PROJECTS.—Eighty percent of the funding under this section shall be limited to—

(A) carbon capture and sequestration technologies;

(B) gasification technologies, including gasification combined cycle, gasification fuel cells, gasification co-production, or hybrid gasification/combustion; or

(C) other technology either by itself or in conjunction with other technologies that has the potential to achieve near zero emissions.

SEC. 1233. RESEARCH AND DEVELOPMENT FOR ADVANCED SAFE AND EFFICIENT COAL MINING TECHNOLOGIES.

(a) ESTABLISHMENT.—The Secretary of Energy shall establish a cooperative research partnership involving appropriate Federal agencies, coal producers, including associations, equipment manufacturers, universities with mining engineering departments, and other relevant entities to—

(1) develop mining research priorities identified by the Mining Industry of the Future Program and in the recommendations from relevant reports of the National Academy of Sciences on mining technologies;

(2) establish a process for conducting joint industry-Government research and development; and

(3) expand mining research capabilities at institutions of higher education.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out activities under this section, $12,000,000 in fiscal year 2003 and $15,000,000 in fiscal year 2004.

(2) LIMIT ON USE OF FUNDS.—Not less than 20 percent of any funds appropriated in a given fiscal year under this subsection shall be dedicated to research carried out at institutions of higher education.

SEC. 1234. ULTRA-DEEPWATER AND UNCONVENTIONAL RESOURCE EXPLORATION AND PRODUCTION TECHNOLOGIES.

(a) DEFINITIONS.—In this section:

(1) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the Ultra-Deepwater and Unconventional Resource Technology Advisory Committee established under subsection (c).

(2) AWARD.—The term ''award'' means a cooperative agreement, contract, award or other types of agreement as appropriate.

(3) DEEPWATER.—The term ''deepwater'' means a water depth that is greater than 200 but less than 1,500 meters.

(4) ELIGIBLE AWARD RECIPIENT.—The term ''eligible award recipient'' includes—

(A) a research institution;

(B) an institution of higher education;

(C) a corporation; and

(D) a managing consortium formed among entities described in subparagraphs (A) through (C).

(5) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(6) MANAGING CONSORTIUM.—The term ''managing consortium'' means an entity that—

(A) exists as of the date of enactment of this section;

(B)(i) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986; and

(ii) is exempt from taxation under section 501(a) of that Code;

(C) is experienced in planning and managing programs in natural gas or other petroleum exploration and production research, development, and demonstration; and

(D) has demonstrated capabilities and experience in representing the views and priorities of industry, institutions of higher education and other research institutions in formulating comprehensive research and development plans and programs.

(7) PROGRAM.—The term ''program'' means the program of research, development, and demonstration established under subsection (b)(1)(A).

(8) ULTRA-DEEPWATER.—The term ''ultra-deepwater'' means a water depth that is equal to or greater than 1,500 meters.

(9) ULTRA-DEEPWATER ARCHITECTURE.—The term ''ultra-deepwater architecture'' means the integration of technologies to explore and produce natural gas or petroleum products located at ultra-deepwater depths.

(10) ULTRA-DEEPWATER RESOURCE.—The term ''ultra-deepwater resource'' means natural gas or any other petroleum resource (including methane hydrate) located in an ultra-deepwater area.

(11) UNCONVENTIONAL RESOURCE.—The term ''unconventional resource'' means natural gas or any other petroleum resource located in a formation on physically or economically inaccessible land currently available for lease for purposes of natural gas or other petroleum exploration or production.

(b) ULTRA-DEEPWATER AND UNCONVENTIONAL EXPLORATION AND PRODUCTION PROGRAM.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary shall establish a program of research into, and development and demonstration of, ultra-deepwater resource and unconventional resource exploration and production technologies.

(B) LOCATION; IMPLEMENTATION.—The program under this subsection shall be carried out—

(i) in areas on the outer Continental Shelf that, as of the date of enactment of this section, are available for leasing; and

(ii) on unconventional resources.

(2) COMPONENTS.—The program shall include one or more programs for long-term research into—

(A) new deepwater ultra-deepwater resource and unconventional resource exploration and production technologies; or

(B) environmental mitigation technologies for production of ultra-deepwater resource and unconventional resource.

(c) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this section, the Secretary shall establish an advisory committee to be known as the ''Ultra-Deepwater and Unconventional Resource Technology Advisory Committee''.

(2) MEMBERSHIP.—

(A) COMPOSITION.—Subject to subparagraph (B), the advisory committee shall be composed of seven members appointed by the Secretary that—

(i) have extensive operational knowledge of and experience in the natural gas and other petroleum exploration and production industry; and

(ii) are not Federal employees or employees of contractors to a Federal agency.

(B) EXPERTISE.—Of the members of the advisory committee appointed under subparagraph (A)—

(i) at least four members shall have extensive knowledge of ultra-deepwater resource exploration and production technologies;

(ii) at least three members shall have extensive knowledge of unconventional resource exploration and production technologies.

(3) DUTIES.—The advisory committee shall advise the Secretary in the implementation of this section.

(4) COMPENSATION.—A member of the advisory committee shall serve without compensation but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(d) AWARDS.—

(1) TYPES OF AWARDS.—

(A) ULTRA-DEEPWATER RESOURCES.—

(i) IN GENERAL.—The Secretary shall make awards for research into, and development and demonstration of, ultra-deepwater resource exploration and production technologies—

(I) to maximize the value of the ultra-deepwater resources of the United States;

(II) to increase the supply of ultra-deepwater resources by lowering the cost and improving the efficiency of exploration and production of such resources; and

(III) to improve safety and minimize negative environmental impacts of that exploration and production.

(ii) ULTRA-DEEPWATER ARCHITECTURE.—In furtherance of the purposes described in clause (i), the Secretary shall, where appropriate, solicit proposals from a managing consortium to develop and demonstrate next-generation architecture for ultra-deepwater resource production.

(B) UNCONVENTIONAL RESOURCES.—The Secretary shall make awards—

(i) to carry out research into, and development and demonstration of, technologies to maximize the value of unconventional resources; and

(ii) to develop technologies to simultaneously—

(I) increase the supply of unconventional resources by lowering the cost and improving the efficiency of exploration and production of unconventional resources; and

(II) improve safety and minimize negative environmental impacts of that exploration and production.

(2) CONDITIONS.—An award made under this subsection shall be subject to the following conditions:

(A) MULTIPLE ENTITIES.—If an award recipient is composed of more than one eligible organization, the recipient shall provide a signed contract, agreed to by all eligible organizations comprising the award recipient, that defines, in a manner that is consistent with all applicable law in effect as of the date of the contract, all rights to intellectual property for—

(i) technology in existence as of that date; and

(ii) future inventions conceived and developed using funds provided under the award.

(B) COMPONENTS OF APPLICATION.—An application for an award for a demonstration project shall describe with specificity any intended commercial applications of the technology to be demonstrated.

(C) COST SHARING.—Non-Federal cost sharing shall be in accordance with section 1403.

(e) PLAN AND FUNDING.—

(1) IN GENERAL.—The Secretary, and where appropriate, a managing consortium under subsection (d)(1)(A)(ii), shall formulate annual operating and performance objectives, develop multiyear technology roadmaps, and establish research and development priorities for the funding of activities under this section which will serve as guidelines for making awards including cost-matching objectives.

(2) INDUSTRY INPUT.—In carrying out this program, the Secretary shall promote maximum industry input through the use of managing consortia or other organizations in planning and executing the research areas and conducting

workshops or reviews to ensure that this program focuses on industry problems and needs.

(f) AUDITING.—

(1) IN GENERAL.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds authorized by this section, provided through a managing consortium, are expended in a manner consistent with the purposes of this section.

(2) REPORTS.—The auditor retained under paragraph (1) shall submit to the Secretary, and the Secretary shall transmit to the appropriate congressional committees, an annual report that describes—

(A) the findings of the auditor under paragraph (1); and

(B) a plan under which the Secretary may remedy any deficiencies identified by the auditor.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section.

(h) TERMINATION OF AUTHORITY.—The authority provided by this section shall terminate on September 30, 2009.

(i) SAVINGS PROVISION.—Nothing in this section is intended to displace, duplicate or diminish any previously authorized research activities of the Department of Energy.

SEC. 1235. RESEARCH AND DEVELOPMENT FOR NEW NATURAL GAS TRANSPORTATION TECHNOLOGIES.

The Secretary of Energy shall conduct a comprehensive 5-year program for research, development and demonstration to improve the reliability, efficiency, safety and integrity of the natural gas transportation and distribution infrastructure and for distributed energy resources (including microturbines, fuel cells, advanced engine-generators, gas turbines, reciprocating engines, hybrid power generation systems, and all ancillary equipment for dispatch, control and maintenance).

SEC. 1236. AUTHORIZATION OF APPROPRIATIONS FOR OFFICE OF ARCTIC ENERGY.

There are authorized to be appropriated to the Secretary for the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) such sums as may be necessary, but not to exceed $25,000,000 for each of fiscal years 2003 through 2011.

SEC. 1237. CLEAN COAL TECHNOLOGY LOAN.

There is authorized to be appropriated not to exceed $125,000,000 to the Secretary of Energy to provide a loan to the owner of the experimental plant constructed under United States Department of Energy cooperative agreement number DE–FC22–91PC99544 on such terms and conditions as the Secretary determines, including interest rates and upfront payments.

Subtitle D—Nuclear Energy

SEC. 1241. ENHANCED NUCLEAR ENERGY RESEARCH AND DEVELOPMENT.

(a) PROGRAM DIRECTION.—The Secretary shall conduct an energy research, development, demonstration, and technology deployment program to enhance nuclear energy.

(b) PROGRAM GOALS.—The program shall—

(1) support research related to existing United States nuclear power reactors to extend their lifetimes and increase their reliability while optimizing their current operations for greater efficiencies;

(2) examine—

(A) advanced proliferation-resistant and passively safe reactor designs;

(B) new reactor designs with higher efficiency, lower cost, and improved safety;

(C) in coordination with activities carried out under the amendments made by section 1223, designs for a high temperature reactor capable of producing large-scale quantities of hydrogen using thermochemical processes;

(D) proliferation-resistant and high-burn-up nuclear fuels;

(E) minimization of generation of radioactive materials;

(F) improved nuclear waste management technologies; and

(G) improved instrumentation science;

(3) attract new students and faculty to the nuclear sciences and nuclear engineering and related fields (including health physics and nuclear and radiochemistry) through—

(A) university-based fundamental research for existing faculty and new junior faculty;

(B) support for the re-licensing of existing training reactors at universities in conjunction with industry; and

(C) completing the conversion of existing training reactors with proliferation-resistant fuels that are low enriched and to adapt those reactors to new investigative uses;

(4) maintain a national capability and infrastructure to produce medical isotopes and ensure a well trained cadre of nuclear medicine specialists in partnership with industry;

(5) ensure that our nation has adequate capability to power future satellite and space missions; and

(6) maintain, where appropriate through a prioritization process, a balanced research infrastructure so that future research programs can use these facilities.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) CORE NUCLEAR RESEARCH PROGRAMS.—There are authorized to be appropriated to the Secretary for carrying out research, development, demonstration, and technology deployment activities under subsection (b)(1) through (3)—

(A) $100,000,000 for fiscal year 2003;

(B) $110,000,000 for fiscal year 2004;

(C) $120,000,000 for fiscal year 2005; and

(D) $130,000,000 for fiscal year 2006.

(2) SUPPORTING NUCLEAR ACTIVITIES.—There are authorized to be appropriated to the Secretary for carrying out activities under subsection (b)(4) through (6), as well as nuclear facilities management and program direction—

(A) $200,000,000 for fiscal year 2003;

(B) $202,000,000 for fiscal year 2004;

(C) $207,000,000 for fiscal year 2005; and

(D) $212,000,000 for fiscal year 2006.

SEC. 1242. UNIVERSITY NUCLEAR SCIENCE AND ENGINEERING SUPPORT.

(a) ESTABLISHMENT.—The Secretary shall support a program to maintain the nation's human resource investment and infrastructure in the nuclear sciences and engineering and related fields (including health physics and nuclear and radiochemistry), consistent with departmental missions related to civilian nuclear research and development.

(b) DUTIES.—In carrying out the program under this section, the Secretary shall—

(1) develop a graduate and undergraduate fellowship program to attract new and talented students;

(2) assist universities in recruiting and retaining new faculty in the nuclear sciences and engineering through a Junior Faculty Research Initiation Grant Program;

(3) support fundamental nuclear sciences and engineering research through the Nuclear Engineering Education Research Program;

(4) encourage collaborative nuclear research between industry, national laboratories and universities through the Nuclear Energy Research Initiative; and

(5) support communication and outreach related to nuclear science and engineering.

(c) MAINTAINING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.—Activities under this section may include:

(1) Converting research reactors to low-enrichment fuels, upgrading operational instrumentation, and sharing of reactors among universities.

(2) Providing technical assistance, in collaboration with the United States nuclear industry, in re-licensing and upgrading training reactors as part of a student training program.

(3) Providing funding for reactor improvements as part of a focused effort that emphasizes research, training, and education.

(d) UNIVERSITY-NATIONAL LABORATORY INTERACTIONS.—The Secretary shall develop—

(1) a sabbatical fellowship program for university professors to spend extended periods of time at National Laboratories in the areas of nuclear science and technology; and

(2) a visiting scientist program in which National Laboratory staff can spend time in academic nuclear science and engineering departments. The Secretary may provide for fellowships for students to spend time at National Laboratories in the area of nuclear science with a member of the Laboratory staff acting as a mentor.

(e) OPERATING AND MAINTENANCE COSTS.—Funding for a research project provided under this section may be used to offset a portion of the operating and maintenance costs of a university research reactor used in the research project, on a cost-shared basis with the university.

(f) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1241(c)(1), the following amounts are authorized for activities under this section—

(1) $33,000,000 for fiscal year 2003;

(2) $37,900,000 for fiscal year 2004;

(3) $43,600,000 for fiscal year 2005; and

(4) $50,100,000 for fiscal year 2006.

SEC. 1243. NUCLEAR ENERGY RESEARCH INITIATIVE.

(a) ESTABLISHMENT.—The Secretary shall support a Nuclear Energy Research Initiative for grants for research relating to nuclear energy.

(b) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1241(c), there are authorized to be appropriated to the Secretary for activities under this section such sums as are necessary for each fiscal year.

SEC. 1244. NUCLEAR ENERGY PLANT OPTIMIZATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall support a Nuclear Energy Plant Optimization Program for grants to improve nuclear energy plant reliability, availability, and productivity. Notwithstanding section 1403, the program shall require industry cost-sharing of at least 50 percent and be subject to annual review by the Nuclear Energy Research Advisory Committee of the Department.

(b) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1241(c), there are authorized to be appropriated to the Secretary for activities under this section such sums as are necessary for each fiscal year.

SEC. 1245. NUCLEAR ENERGY TECHNOLOGY DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall support a Nuclear Energy Technology Development Program to develop a technology roadmap to design and develop new nuclear energy powerplants in the United States.

(b) GENERATION IV REACTOR STUDY.—The Secretary shall, as part of the program under subsection (a), also conduct a study of Generation IV nuclear energy systems, including development of a technology roadmap and performance of research and development necessary to make an informed technical decision regarding the most promising candidates for commercial deployment. The study shall examine advanced proliferation-resistant and passively safe reactor designs, new reactor designs with higher efficiency, lower cost and improved safety, proliferation-resistant and high burn-up fuels, minimization of generation of radioactive materials, improved nuclear waste management technologies, and improved instrumentation science. Not later than December 31, 2002, the Secretary shall submit to Congress a report describing the results of the study.

(c) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized to be appropriated under section 1241(c), there are authorized to be

appropriated to the Secretary for activities under this section such sums as are necessary for each fiscal year.

Subtitle E—Fundamental Energy Science

SEC. 1251. ENHANCED PROGRAMS IN FUNDAMENTAL ENERGY SCIENCE.

(a) PROGRAM DIRECTION.—The Secretary, acting through the Office of Science, shall—

(1) conduct a comprehensive program of fundamental research, including research on chemical sciences, physics, materials sciences, biological and environmental sciences, geosciences, engineering sciences, plasma sciences, mathematics, and advanced scientific computing;

(2) maintain, upgrade and expand the scientific user facilities maintained by the Office of Science and ensure that they are an integral part of the departmental mission for exploring the frontiers of fundamental science;

(3) maintain a leading-edge research capability in the energy-related aspects of nanoscience and nanotechnology, advanced scientific computing and genome research; and

(4) ensure that its fundamental science programs, where appropriate, help inform the applied research and development programs of the Department.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out research, development, demonstration, and technology deployment activities under this subtitle—

(1) $3,785,000,000 for fiscal year 2003;
(2) $4,153,000,000 for fiscal year 2004;
(3) $4,586,000,000 for fiscal year 2005; and
(4) $5,000,000,000 for fiscal year 2006.

SEC. 1252. NANOSCALE SCIENCE AND ENGINEERING RESEARCH.

(a) ESTABLISHMENT.—The Secretary, acting through the Office of Science, shall support a program of research and development in nanoscience and nanoengineering consistent with the Department's statutory authorities related to research and development. The program shall include efforts to further the understanding of the chemistry, physics, materials science and engineering of phenomena on the scale of 1 to 100 nanometers.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) support both individual investigators and multidisciplinary teams of investigators;

(2) pursuant to subsection (c), develop, plan, construct, acquire, or operate special equipment or facilities for the use of investigators conducting research and development in nanoscience and nanoengineering;

(3) support technology transfer activities to benefit industry and other users of nanoscience and nanoengineering; and

(4) coordinate research and development activities with industry and other Federal agencies.

(c) NANOSCIENCE AND NANOENGINEERING RESEARCH CENTERS AND MAJOR INSTRUMENTATION.—

(1) AUTHORIZATION.—From amounts authorized to be appropriated under section 1251(b), the amounts specified under subsection (d)(2) shall, subject to appropriations, be available for projects to develop, plan, construct, acquire, or operate special equipment, instrumentation, or facilities for investigators conducting research and development in nanoscience and nanoengineering.

(2) PROJECTS.—Projects under paragraph (1) may include the measurement of properties at the scale of 1 to 100 nanometers, manipulation at such scales, and the integration of technologies based on nanoscience or nanoengineering into bulk materials or other technologies.

(3) FACILITIES.—Facilities under paragraph (1) may include electron microcharacterization facilities, microlithography facilities, scanning probe facilities and related instrumentation science.

(4) COLLABORATION.—The Secretary shall encourage collaborations among universities, laboratories and industry at facilities under this subsection. At least one facility under this subsection shall have a specific mission of technology transfer to other institutions and to industry.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) TOTAL AUTHORIZATION.—From amounts authorized to be appropriated under section 1251(b), the following amounts are authorized for activities under this section—

(A) $270,000,000 for fiscal year 2003;
(B) $290,000,000 for fiscal year 2004;
(C) $310,000,000 for fiscal year 2005; and
(D) $330,000,000 for fiscal year 2006.

(2) NANOSCIENCE AND NANOENGINEERING RESEARCH CENTERS AND MAJOR INSTRUMENTATION.—Of the amounts under paragraph (1), the following amounts are authorized to carry out subsection (c)—

(A) $135,000,000 for fiscal year 2003;
(B) $150,000,000 for fiscal year 2004;
(C) $120,000,000 for fiscal year 2005; and
(D) $100,000,000 for fiscal year 2006.

SEC. 1253. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY MISSIONS.

(a) ESTABLISHMENT.—The Secretary, acting through the Office of Science, shall support a program to advance the Nation's computing capability across a diverse set of grand challenge computationally based science problems related to departmental missions.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) advance basic science through computation by developing software to solve grand challenge science problems on new generations of computing platforms;

(2) enhance the foundations for scientific computing by developing the basic mathematical and computing systems software needed to take full advantage of the computing capabilities of computers with peak speeds of 100 teraflops or more, some of which may be unique to the scientific problem of interest;

(3) enhance national collaboratory and networking capabilities by developing software to integrate geographically separated researchers into effective research teams and to facilitate access to and movement and analysis of large (petabyte) data sets; and

(4) maintain a robust scientific computing hardware infrastructure to ensure that the computing resources needed to address DOE missions are available; explore new computing approaches and technologies that promise to advance scientific computing.

(c) HIGH-PERFORMANCE COMPUTING ACT PROGRAM.—Section 203(a) of the High-Performance Computing Act of 1991 (15 U.S.C. 5523(a)) is amended—

(1) in paragraph (3), by striking ''and'';

(2) in paragraph (4), by striking the period and inserting ''; and''; and

(3) by adding after paragraph (4) the following:

''(5) conduct an integrated program of research, development, and provision of facilities to develop and deploy to scientific and technical users the high-performance computing and collaboration tools needed to fulfill the statutory missions of the Department of Energy in conducting basic and applied energy research.''.

(d) COORDINATION WITH THE DOE NATIONAL NUCLEAR SECURITY AGENCY ACCELERATED STRATEGIC COMPUTING INITIATIVE AND OTHER NATIONAL COMPUTING PROGRAMS.—The Secretary shall ensure that this program, to the extent feasible, is integrated and consistent with—

(1) the Accelerated Strategic Computing Initiative of the National Nuclear Security Agency; and

(2) other national efforts related to advanced scientific computing for science and engineering.

(e) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1251(b), the following amounts are authorized for activities under this section—

(1) $285,000,000 for fiscal year 2003;
(2) $300,000,000 for fiscal year 2004;
(3) $310,000,000 for fiscal year 2005; and
(4) $320,000,000 for fiscal year 2006.

SEC. 1254. FUSION ENERGY SCIENCES PROGRAM AND PLANNING.

(a) OVERALL PLAN FOR FUSION ENERGY SCIENCES PROGRAM.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this subtitle, the Secretary, after consultation with the Fusion Energy Sciences Advisory Committee, shall develop and transmit to the Congress a plan to ensure a strong scientific base for the Fusion Energy Sciences Program within the Office of Science and to enable the experiments described in subsections (b) and (c).

(2) OBJECTIVES OF PLAN.—The plan under this subsection shall include as its objectives—

(A) to ensure that existing fusion research facilities and equipment are more fully utilized with appropriate measurements and control tools;

(B) to ensure a strengthened fusion science theory and computational base;

(C) to encourage and ensure that the selection of and funding for new magnetic and inertial fusion research facilities is based on scientific innovation and cost effectiveness;

(D) to improve the communication of scientific results and methods between the fusion science community and the wider scientific community;

(E) to ensure that adequate support is provided to optimize the design of the magnetic fusion burning plasma experiments referred to in subsections (b) and (c); and

(F) to ensure that inertial confinement fusion facilities are utilized to the extent practicable for the purpose of inertial fusion energy research and development.

(b) PLAN FOR UNITED STATES FUSION EXPERIMENT.—

(1) IN GENERAL.—The Secretary, after consultation with the Fusion Energy Sciences Advisory Committee, shall develop a plan for construction in the United States of a magnetic fusion burning plasma experiment for the purpose of accelerating scientific understanding of fusion plasmas. The Secretary shall request a review of the plan by the National Academy of Sciences and shall transmit the plan and the review to the Congress by July 1, 2004.

(2) REQUIREMENTS OF PLAN.—The plan described in paragraph (1) shall—

(A) address key burning plasma physics issues; and

(B) include specific information on the scientific capabilities of the proposed experiment, the relevance of these capabilities to the goal of practical fusion energy, and the overall design of the experiment including its estimated cost and potential construction sites.

(c) PLAN FOR PARTICIPATION IN AN INTERNATIONAL EXPERIMENT.—In addition to the plan described in subsection (b), the Secretary, after consultation with the Fusion Energy Sciences Advisory Committee, may also develop a plan for United States participation in an international burning plasma experiment for the same purpose, whose construction is found by the Secretary to be highly likely and where United States participation is cost-effective relative to the cost and scientific benefits of a domestic experiment described in subsection (b). If the Secretary elects to develop a plan under this subsection, he shall include the information described in subsection (b)(2), and an estimate of the cost of United States participation in such an international experiment. The Secretary shall request a review by the National Academy of Sciences of a plan developed under this subsection, and shall transmit the plan and the review to the Congress no later than July 1, 2004.

(d) AUTHORIZATION FOR RESEARCH AND DEVELOPMENT.—The Secretary, through the Office of Science, may conduct any research and development necessary to fully develop the plans described in this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1251, the following amounts are authorized for activities under this section and for activities of the Fusion Energy Science Program—

(1) for fiscal year 2003, $335,000,000;

(2) for fiscal year 2004, $349,000,000;

(3) for fiscal year 2005, $362,000,000; and

(4) for fiscal year 2006, $377,000,000.

Subtitle F—Energy, Safety, and Environmental Protection

SEC. 1261. CRITICAL ENERGY INFRASTRUCTURE PROTECTION RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—The Secretary shall carry out a research, development, demonstration and technology deployment program, in partnership with industry, on critical energy infrastructure protection, consistent with the roles and missions outlined for the Secretary in Presidential Decision Directive 63, entitled ''Critical Infrastructure Protection''. The program shall have the following goals:

(1) Increase the understanding of physical and information system disruptions to the energy infrastructure that could result in cascading or widespread regional outages.

(2) Develop energy infrastructure assurance ''best practices'' through vulnerability and risk assessments.

(3) Protect against, mitigate the effect of, and improve the ability to recover from disruptive incidents within the energy infrastructure.

(b) PROGRAM SCOPE.—The program under subsection (a) shall include research, development, deployment, technology demonstration for—

(1) analysis of energy infrastructure interdependencies to quantify the impacts of system vulnerabilities in relation to each other;

(2) probabilistic risk assessment of the energy infrastructure to account for unconventional and terrorist threats;

(3) incident tracking and trend analysis tools to assess the severity of threats and reported incidents to the energy infrastructure; and

(4) integrated multisensor, warning and mitigation technologies to detect, integrate, and localize events affecting the energy infrastructure including real time control to permit the reconfiguration of energy delivery systems.

(c) REGIONAL COORDINATION.—The program under this section shall cooperate with Departmental activities to promote regional coordination under section 102 of this Act, to ensure that the technologies and assessments developed by the program are transferred in a timely manner to State and local authorities, and to the energy industries.

(d) COORDINATION WITH INDUSTRY RESEARCH ORGANIZATIONS.—The Secretary may enter into grants, contracts, and cooperative agreements with industry research organizations to facilitate industry participation in research under this section and to fulfill applicable cost-sharing requirements.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section—

(1) $25,000,000 for fiscal year 2003;

(2) $26,000,000 for fiscal year 2004;

(3) $27,000,000 for fiscal year 2005; and

(4) $28,000,000 for fiscal year 2006.

(f) CRITICAL ENERGY INFRASTRUCTURE FACILITY DEFINED.—For purposes of this section, the term ''critical energy infrastructure facility'' means a physical or cyber-based system or service for the generation, transmission or distribution of electrical energy, or the production, refining, transportation, or storage of petroleum, natural gas, or petroleum product, the incapacity or destruction of which would have a debilitating impact on the defense or economic security of the United States. The term shall not include a facility that is licensed by the Nuclear Regulatory Commission under section 103 or 104b of the Atomic Energy Act of 1954 (42 U.S.C. 2133 and 2134(b)).

SEC. 1262. RESEARCH AND DEMONSTRATION FOR REMEDIATION OF GROUNDWATER FROM ENERGY ACTIVITIES.

(a) IN GENERAL.—The Secretary shall carry out a research, development, demonstration, and technology deployment program to improve methods for environmental restoration of groundwater contaminated by energy activities, including oil and gas production, surface and underground mining of coal, and in-situ extraction of energy resources.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $10,000,000 for each of fiscal years 2003 through 2006.

TITLE XIII—CLIMATE CHANGE SCIENCE AND TECHNOLOGY

Subtitle A—Department of Energy Programs

SEC. 1301. DEPARTMENT OF ENERGY GLOBAL CHANGE RESEARCH.

(a) PROGRAM DIRECTION.—The Secretary, acting through the Office of Science, shall conduct a comprehensive research program to understand and address the effects of energy production and use on the global climate system.

(b) PROGRAM ELEMENTS.—

(1) CLIMATE MODELING.—The Secretary shall—

(A) conduct observational and analytical research to acquire and interpret the data needed to describe the radiation balance from the surface of the Earth to the top of the atmosphere;

(B) determine the factors responsible for the Earth's radiation balance and incorporate improved understanding of such factors in climate models;

(C) improve the treatment of aerosols and clouds in climate models;

(D) reduce the uncertainty in decade-to-century model-based projections of climate change; and

(E) increase the availability and utility of climate change simulations to researchers and policy makers interested in assessing the relationship between energy and climate change.

(2) CARBON CYCLE.—The Secretary shall—

(A) carry out field research and modeling activities—

(i) to understand and document the net exchange of carbon dioxide between major terrestrial ecosystems and the atmosphere; or

(ii) to evaluate the potential of proposed methods of carbon sequestration;

(B) develop and test carbon cycle models; and

(C) acquire data and develop and test models to simulate and predict the transport, transformation, and fate of energy-related emissions in the atmosphere.

(3) ECOLOGICAL PROCESSES.—The Secretary shall carry out long-term experiments of the response of intact terrestrial ecosystems to—

(A) alterations in climate and atmospheric composition; or

(B) land-use changes that affect ecosystem extent and function.

(4) INTEGRATED ASSESSMENT.—The Secretary shall develop and improve methods and tools for integrated analyses of the climate change system from emissions of aerosols and greenhouse gases to the consequences of these emissions on climate and the resulting effects of human-induced climate change on economic and social systems, with emphasis on critical gaps in integrated assessment modeling, including modeling of technology innovation and diffusion and the development of metrics of economic costs of climate change and policies for mitigating or adapting to climate change.

(c) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1251(b), there are authorized to be appropriated to the Secretary for carrying out activities under this section—

(1) $150,000,000 for fiscal year 2003;

(2) $175,000,000 for fiscal year 2004;

(3) $200,000,000 for fiscal year 2005; and

(4) $230,000,000 for fiscal year 2006.–

(d) LIMITATION ON FUNDS.—Funds authorized to be appropriated under this section shall not be used for the development, demonstration, or deployment of technology to reduce, avoid, or sequester greenhouse gas emissions.

SEC. 1302. AMENDMENTS TO THE FEDERAL NONNUCLEAR RESEARCH AND DEVELOPMENT ACT OF 1974.

Section 6 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5905) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3) by striking the period at the end and inserting '', and''; and

(C) by adding at the end the following:

''(4) solutions to the effective management of greenhouse gas emissions in the long term by the development of technologies and practices designed to—

''(A) reduce or avoid anthropogenic emissions of greenhouse gases;

''(B) remove and sequester greenhouse gases from emissions streams; and

''(C) remove and sequester greenhouse gases from the atmosphere.''; and

(2) in subsection (b)—

(A) in paragraph (2), by striking ''subsection (a)(1) through (3)'' and inserting ''paragraphs (1) through (4) of subsection (a)''; and

(B) in paragraph (3)—

(i) in subparagraph (R), by striking ''and'' at the end;

(ii) in subparagraph (S), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(T) to pursue a long-term climate technology strategy designed to demonstrate a variety of technologies by which stabilization of greenhouse gases might be best achieved, including accelerated research, development, demonstration and deployment of—

''(i) renewable energy systems;

''(ii) advanced fossil energy technology;

''(iii) advanced nuclear power plant design;

''(iv) fuel cell technology for residential, industrial and transportation applications;

''(v) carbon sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon;

''(vi) efficient electrical generation, transmission and distribution technologies; and

''(vii) efficient end use energy technologies.''.

Subtitle B—Department of Agriculture Programs

SEC. 1311. CARBON SEQUESTRATION BASIC AND APPLIED RESEARCH.

(a) BASIC RESEARCH.—

(1) IN GENERAL.—The Secretary of Agriculture shall carry out research in the areas of soil science that promote understanding of—

(A) the net sequestration of organic carbon in soil; and

(B) net emissions of other greenhouse gases from agriculture.

(2) AGRICULTURAL RESEARCH SERVICE.—The Secretary of Agriculture, acting through the Agricultural Research Service, shall collaborate with other Federal agencies in developing data and carrying out research addressing soil carbon fluxes (losses and gains) and net emissions of methane and nitrous oxide from cultivation and animal management activities.

(3) COOPERATIVE STATE RESEARCH, EXTENSION, AND EDUCATION SERVICE.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Cooperative State Research, Extension, and Education Service, shall establish a competitive grant program to carry out research on the matters described in paragraph (1) in land grant universities and other research institutions.

(B) CONSULTATION ON RESEARCH TOPICS.—Before issuing a request for proposals for basic research under paragraph (1), the Cooperative State Research, Extension, and Education Service shall consult with the Agricultural Research

Service to ensure that proposed research areas are complementary with and do not duplicate research projects underway at the Agricultural Research Service or other Federal agencies.

(b) APPLIED RESEARCH.—

(1) IN GENERAL.—The Secretary of Agriculture shall carry out applied research in the areas of soil science, agronomy, agricultural economics and other agricultural sciences to—

(A) promote understanding of—

(i) how agricultural and forestry practices affect the sequestration of organic and inorganic carbon in soil and net emissions of other greenhouse gases;

(ii) how changes in soil carbon pools are cost-effectively measured, monitored, and verified; and

(iii) how public programs and private market approaches can be devised to incorporate carbon sequestration in a broader societal greenhouse gas emission reduction effort;

(B) develop methods for establishing baselines for measuring the quantities of carbon and other greenhouse gases sequestered; and

(C) evaluate leakage and performance issues.

(2) REQUIREMENTS.—To the maximum extent practicable, applied research under paragraph (1) shall—

(A) draw on existing technologies and methods; and

(B) strive to provide methodologies that are accessible to a nontechnical audience.

(3) MINIMIZATION OF ADVERSE ENVIRONMENTAL IMPACTS.—All applied research under paragraph (1) shall be conducted with an emphasis on minimizing adverse environmental impacts.

(4) NATURAL RESOURCES CONSERVATION SERVICE.—The Secretary of Agriculture, acting through the Natural Resources Conservation Service, shall collaborate with other Federal agencies, including the National Institute of Standards and Technology, in developing new measuring techniques and equipment or adapting existing techniques and equipment to enable cost-effective and accurate monitoring and verification, for a wide range of agricultural and forestry practices, of—

(A) changes in soil carbon content in agricultural soils, plants, and trees; and

(B) net emissions of other greenhouse gases.

(5) COOPERATIVE STATE RESEARCH, EXTENSION, AND EDUCATION SERVICE.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Cooperative State Research, Extension, and Education Service, shall establish a competitive grant program to encourage research on the matters described in paragraph (1) by land grant universities and other research institutions.

(B) CONSULTATION ON RESEARCH TOPICS.—Before issuing a request for proposals for applied research under paragraph (1), the Cooperative State Research, Extension, and Education Service shall consult with the National Resources Conservation Service and the Agricultural Research Service to ensure that proposed research areas are complementary with and do not duplicate research projects underway at the Agricultural Research Service or other Federal agencies.

(c) RESEARCH CONSORTIA.—

(1) IN GENERAL.—The Secretary of Agriculture may designate not more than two research consortia to carry out research projects under this section, with the requirement that the consortia propose to conduct basic research under subsection (a) and applied research under subsection (b).

(2) SELECTION.—The consortia shall be selected in a competitive manner by the Cooperative State Research, Extension, and Education Service.

(3) ELIGIBLE CONSORTIUM PARTICIPANTS.—Entities eligible to participate in a consortium include—

(A) land grant colleges and universities;

(B) private research institutions;

(C) State geological surveys;

(D) agencies of the Department of Agriculture;

(E) research centers of the National Aeronautics and Space Administration and the Department of Energy;

(F) other Federal agencies;

(G) representatives of agricultural businesses and organizations with demonstrated expertise in these areas; and

(H) representatives of the private sector with demonstrated expertise in these areas.

(4) RESERVATION OF FUNDING.—If the Secretary of Agriculture designates one or two consortia, the Secretary of Agriculture shall reserve for research projects carried out by the consortium or consortia not more than 25 percent of the amounts made available to carry out this section for a fiscal year.

(d) STANDARDS OF PRECISION.—

(1) CONFERENCE.—Not later than 3 years after the date of enactment of this subtitle, the Secretary of Agriculture, acting through the Agricultural Research Service and in consultation with the Natural Resources Conservation Service, shall convene a conference of key scientific experts on carbon sequestration and measurement techniques from various sectors (including the Government, academic, and private sectors) to—

(A) discuss benchmark standards of precision for measuring soil carbon content and net emissions of other greenhouse gases;

(B) designate packages of measurement techniques and modeling approaches to achieve a level of precision agreed on by the participants in the conference; and

(C) evaluate results of analyses on baseline, permanence, and leakage issues.

(2) DEVELOPMENT OF BENCHMARK STANDARDS.—

(A) IN GENERAL.—The Secretary shall develop benchmark standards for measuring the carbon content of soils and plants (including trees) based on—

(i) information from the conference under paragraph (1);

(ii) research conducted under this section; and

(iii) other information available to the Secretary.

(B) OPPORTUNITY FOR PUBLIC COMMENT.—The Secretary shall provide an opportunity for the public to comment on benchmark standards developed under subparagraph (A).

(3) REPORT.—Not later than 180 days after the conclusion of the conference under paragraph (1), the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the results of the conference.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2003 through 2006.

(2) ALLOCATION.—Of the amounts made available to carry out this section for a fiscal year, at least 50 percent shall be allocated for competitive grants by the Cooperative State Research, Extension, and Education Service.

SEC. 1312. CARBON SEQUESTRATION DEMONSTRATION PROJECTS AND OUTREACH.

(a) DEMONSTRATION PROJECTS.—

(1) DEVELOPMENT OF MONITORING PROGRAMS.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Natural Resources Conservation Service and in cooperation with local extension agents, experts from land grant universities, and other local agricultural or conservation organizations, shall develop user-friendly programs that combine measurement tools and modeling techniques into integrated packages to monitor the carbon sequestering benefits of conservation practices and net changes in greenhouse gas emissions.

(B) BENCHMARK LEVELS OF PRECISION.—The programs developed under subparagraph (A) shall strive to achieve benchmark levels of precision in measurement in a cost-effective manner.

(2) PROJECTS.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Farm Service Agency, shall establish a program under which projects use the monitoring programs developed under paragraph (1) to demonstrate the feasibility of methods of measuring, verifying, and monitoring—

(i) changes in organic carbon content and other carbon pools in agricultural soils, plants, and trees; and

(ii) net changes in emissions of other greenhouse gases.

(B) EVALUATION OF IMPLICATIONS.—The projects under subparagraph (A) shall include evaluation of the implications for reassessed baselines, carbon or other greenhouse gas leakage, and permanence of sequestration.

(C) SUBMISSION OF PROPOSALS.—Proposals for projects under subparagraph (A) shall be submitted by the appropriate agency of each State, in cooperation with interested local jurisdictions and State agricultural and conservation organizations.

(D) LIMITATION.—Not more than 10 projects under subparagraph (A) may be approved in conjunction with applied research projects under section 1311(b) until benchmark measurement and assessment standards are established under section 1311(d).

(E) NATIONAL FOREST SYSTEM LAND.—The Secretary of Agriculture shall consider the use of National Forest System land as sites to demonstrate the feasibility of monitoring programs developed under paragraph (1).

(b) OUTREACH.—

(1) IN GENERAL.—The Cooperative State Research, Extension, and Education Service shall widely disseminate information about the economic and environmental benefits that can be generated by adoption of conservation practices (including benefits from increased sequestration of carbon and reduced emission of other greenhouse gases).

(2) PROJECT RESULTS.—The Cooperative State Research, Extension, and Education Service shall inform farmers, ranchers, and State agricultural and energy offices in each State of—

(A) the results of demonstration projects under subsection (a)(2) in the State; and

(B) the ways in which the methods demonstrated in the projects might be applicable to the operations of those farmers and ranchers.

(3) POLICY OUTREACH.—On a periodic basis, the Cooperative State Research, Extension, and Education Service shall disseminate information on the policy nexus between global climate change mitigation strategies and agriculture, so that farmers and ranchers may better understand the global implications of the activities of farmers and ranchers.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 2003 through 2006.

(2) ALLOCATION.—Of the amounts made available to carry out this section for a fiscal year, at least 50 percent shall be allocated for demonstration projects under subsection (a)(2).

SEC. 1313. CARBON STORAGE AND SEQUESTRATION ACCOUNTING RESEARCH.

(a) IN GENERAL.—The Secretary of Agriculture, in collaboration with the heads of other Federal agencies, shall conduct research on, develop, and publish as appropriate, carbon storage and sequestration accounting models, reference tables, or other tools that can assist landowners and others in cost-effective and reliable quantification of the carbon release, sequestration, and storage expected to result from various resource uses, land uses, practices, activities or forest, agricultural, or cropland management practices over various periods of time.

(b) PILOT PROGRAMS.—The Secretary of Agriculture shall make competitive grants to not more than five eligible entities to carry out pilot programs to demonstrate and assess the potential for development and use of carbon inventories and accounting systems that can assist in

developing and assessing carbon storage and sequestration policies and programs. Not later than 1 year after the date of enactment of this section, the Secretary of Agriculture, in collaboration with the heads of other Federal agencies and with other interested parties, shall develop guidelines for such pilot programs, including eligibility for awards, application contents, reporting requirements, and mechanisms for peer review.

(c) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary of Agriculture, in collaboration with the heads of other Federal agencies, shall submit to Congress a report on the technical, institutional, infrastructure, design and funding needs to establish and maintain a national carbon storage and sequestration baseline and accounting system. The report shall include documentation of the results of each of the pilot programs.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Agriculture $20,000,000 for fiscal years 2003 through 2007.

Subtitle C—International Energy Technology Transfer

SEC. 1321. CLEAN ENERGY TECHNOLOGY EXPORTS PROGRAM.

(a) DEFINITIONS.—In this section:

(1) CLEAN ENERGY TECHNOLOGY.—The term ''clean energy technology'' means an energy supply or end-use technology that, over its lifecycle and compared to a similar technology already in commercial use in developing countries, countries in transition, and other partner countries—

(A) emits substantially lower levels of pollutants or greenhouse gases; and

(B) may generate substantially smaller or less toxic volumes of solid or liquid waste.

(2) INTERAGENCY WORKING GROUP.—The term ''interagency working group'' means the Interagency Working Group on Clean Energy Technology Exports established under subsection (b).

(b) INTERAGENCY WORKING GROUP.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this section, the Secretary of Energy, the Secretary of Commerce, and the Administrator of the United States Agency for International Development shall jointly establish a Interagency Working Group on Clean Energy Technology Exports. The interagency working group will focus on opening and expanding energy markets and transferring clean energy technology to the developing countries, countries in transition, and other partner countries that are expected to experience, over the next 20 years, the most significant growth in energy production and associated greenhouse gas emissions, including through technology transfer programs under the Framework Convention on Climate Change, other international agreements, and relevant Federal efforts.

(2) MEMBERSHIP.—The interagency working group shall be jointly chaired by representatives appointed by the agency heads under paragraph (1) and shall also include representatives from the Department of State, the Department of the Treasury, the Environmental Protection Agency, the Export-Import Bank, the Overseas Private Investment Corporation, the Trade and Development Agency, and other Federal agencies as deemed appropriate by all three agency heads under paragraph (1).

(3) DUTIES.—The interagency working group shall—

(A) analyze technology, policy, and market opportunities for international development, demonstration, and deployment of clean energy technology;

(B) investigate issues associated with building capacity to deploy clean energy technology in developing countries, countries in transition, and other partner countries, including—

(i) energy-sector reform;

(ii) creation of open, transparent, and competitive markets for energy technologies;

(iii) availability of trained personnel to deploy and maintain the technology; and

(iv) demonstration and cost-buydown mechanisms to promote first adoption of the technology;

(C) examine relevant trade, tax, international, and other policy issues to assess what policies would help open markets and improve United States clean energy technology exports in support of the following areas—

(i) enhancing energy innovation and cooperation, including energy sector and market reform, capacity building, and financing measures;

(ii) improving energy end-use efficiency technologies, including buildings and facilities, vehicle, industrial, and co-generation technology initiatives; and

(iii) promoting energy supply technologies, including fossil, nuclear, and renewable technology initiatives;

(D) establish an advisory committee involving the private sector and other interested groups on the export and deployment of clean energy technology;

(E) monitor each agency's progress towards meeting goals in the 5-year strategic plan submitted to Congress pursuant to the Energy and Water Development Appropriations Act, 2001, and the Energy and Water Development Appropriations Act, 2002;

(F) make recommendations to heads of appropriate Federal agencies on ways to streamline Federal programs and policies to improve each agency's role in the international development, demonstration, and deployment of clean energy technology;

(G) make assessments and recommendations regarding the distinct technological, market, regional, and stakeholder challenges necessary to carry out the program; and

(H) recommend conditions and criteria that will help ensure that United States funds promote sound energy policies in participating countries while simultaneously opening their markets and exporting United States energy technology.

(c) FEDERAL SUPPORT FOR CLEAN ENERGY TECHNOLOGY TRANSFER.—Notwithstanding any other provision of law, each Federal agency or Government corporation carrying out an assistance program in support of the activities of United States persons in the environment or energy sector of a developing country, country in transition, or other partner country shall support, to the maximum extent practicable, the transfer of United States clean energy technology as part of that program.

(d) ANNUAL REPORT.—Not later than 90 days after the date of the enactment of this Act, and on April 1st of each year thereafter, the Interagency Working Group shall submit a report to Congress on its activities during the preceding calendar year. The report shall include a description of the technology, policy, and market opportunities for international development, demonstration, and deployment of clean energy technology investigated by the Interagency Working Group in that year, as well as any policy recommendations to improve the expansion of clean energy markets and United States clean energy technology exports.

(e) REPORT ON USE OF FUNDS.—Not later than October 1, 2002, and each year thereafter, the Secretary of State, in consultation with other Federal agencies, shall submit a report to Congress indicating how United States funds appropriated for clean energy technology exports and other relevant Federal programs are being directed in a manner that promotes sound energy policy commitments in developing countries, countries in transition, and other partner countries, including efforts pursuant to multilateral environmental agreements.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the departments, agencies, and entities of the United States described in subsection (b) such sums as may be necessary to support the transfer of clean energy technology, consistent with the subsidy codes of the World Trade Organization, as part of assistance programs carried out by those departments, agencies, and entities in support of activities of United States persons in the energy sector of a developing country, country in transition, or other partner country.

SEC. 1322. INTERNATIONAL ENERGY TECHNOLOGY DEPLOYMENT PROGRAM.

Section 1608 of the Energy Policy Act of 1992 (42 U.S.C. 13387) is amended by striking subsection (l) and inserting the following:

''(l) INTERNATIONAL ENERGY TECHNOLOGY DEPLOYMENT PROGRAM.—

''(1) DEFINITIONS.—In this subsection:

''(A) INTERNATIONAL ENERGY DEPLOYMENT PROJECT.—The term 'international energy deployment project' means a project to construct an energy production facility outside the United States—

''(i) the output of which will be consumed outside the United States; and

''(ii) the deployment of which will result in a greenhouse gas reduction per unit of energy produced when compared to the technology that would otherwise be implemented—

''(I) 10 percentage points or more, in the case of a unit placed in service before January 1, 2010;

''(II) 20 percentage points or more, in the case of a unit placed in service after December 31, 2009, and before January 1, 2020; or

''(III) 30 percentage points or more, in the case of a unit placed in service after December 31, 2019, and before January 1, 2030.

''(B) QUALIFYING INTERNATIONAL ENERGY DEPLOYMENT PROJECT.—The term 'qualifying international energy deployment project' means an international energy deployment project that—

''(i) is submitted by a United States firm to the Secretary in accordance with procedures established by the Secretary by regulation;

''(ii) uses technology that has been successfully developed or deployed in the United States;

''(iii) meets the criteria of subsection (k);

''(iv) is approved by the Secretary, with notice of the approval being published in the Federal Register; and

''(v) complies with such terms and conditions as the Secretary establishes by regulation.

''(C) UNITED STATES.—For purposes of this paragraph, the term 'United States', when used in a geographical sense, means the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''(2) PILOT PROGRAM FOR FINANCIAL ASSISTANCE.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall, by regulation, provide for a pilot program for financial assistance for qualifying international energy deployment projects.

''(B) SELECTION CRITERIA.—After consultation with the Secretary of State, the Secretary of Commerce, and the United States Trade Representative, the Secretary shall select projects for participation in the program based solely on the criteria under this title and without regard to the country in which the project is located.

''(C) FINANCIAL ASSISTANCE.—

''(i) IN GENERAL.—A United States firm that undertakes a qualifying international energy deployment project that is selected to participate in the pilot program shall be eligible to receive a loan or a loan guarantee from the Secretary.

''(ii) RATE OF INTEREST.—The rate of interest of any loan made under clause (i) shall be equal to the rate for Treasury obligations then issued for periods of comparable maturities.

''(iii) AMOUNT.—The amount of a loan or loan guarantee under clause (i) shall not exceed 50 percent of the total cost of the qualified international energy deployment project.

''(iv) DEVELOPED COUNTRIES.—Loans or loan guarantees made for projects to be located in a developed country, as listed in Annex I of the

United Nations Framework Convention on Climate Change, shall require at least a 50 percent contribution towards the total cost of the loan or loan guarantee by the host country.

''(v) DEVELOPING COUNTRIES.—Loans or loan guarantees made for projects to be located in a developing country (those countries not listed in Annex I of the United Nations Framework Convention on Climate Change) shall require at least a 10 percent contribution towards the total cost of the loan or loan guarantee by the host country.

''(vi) CAPACITY BUILDING RESEARCH.—Proposals made for projects to be located in a developing country may include a research component intended to build technological capacity within the host country. Such research must be related to the technologies being deployed and must involve both an institution in the host country and an industry, university or national laboratory participant from the United States. The host institution shall contribute at least 50 percent of funds provided for the capacity building research.

''(D) COORDINATION WITH OTHER PROGRAMS.—A qualifying international energy deployment project funded under this section shall not be eligible as a qualifying clean coal technology under section 415 of the Clean Air Act (42 U.S.C. 7651n).

''(E) REPORT.—Not later than 5 years after the date of enactment of this subsection, the Secretary shall submit to the President a report on the results of the pilot projects.

''(F) RECOMMENDATION.—Not later than 60 days after receiving the report under subparagraph (E), the President shall submit to Congress a recommendation, based on the results of the pilot projects as reported by the Secretary of Energy, concerning whether the financial assistance program under this section should be continued, expanded, reduced, or eliminated.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $100,000,000 for each of fiscal years 2003 through 2011, to remain available until expended.''.

Subtitle D—Climate Change Science and Information

PART I—AMENDMENTS TO THE GLOBAL CHANGE RESEARCH ACT OF 1990

SEC. 1331. AMENDMENT OF GLOBAL CHANGE RESEARCH ACT OF 1990.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.).

SEC. 1332. CHANGES IN DEFINITIONS.

Paragraph (1) of section 2 (15 U.S.C. 2921) is amended by striking ''Earth and Environmental Sciences'' inserting ''Global Change Research''.

SEC. 1333. CHANGE IN COMMITTEE NAME AND STRUCTURE.

Section 102 (15 U.S.C. 2932) is amended—

(1) by striking ''**EARTH AND ENVIRONMENTAL SCIENCES**'' in the section heading and inserting ''**GLOBAL CHANGE RESEARCH**'';

(2) by striking ''Earth and Environmental Sciences'' in subsection (a) and inserting ''Global Change Research'';

(3) by striking the last sentence of subsection (b) and inserting ''The representatives shall be the Deputy Secretary or the Deputy Secretary's designee (or, in the case of an agency other than a department, the deputy head of that agency or the deputy's designee).'';

(4) by striking ''Chairman of the Council,'' in subsection (c) and inserting ''Director of the Office of National Climate Change Policy with advice from the Chairman of the Council, and'';

(5) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(6) by inserting after subsection (c) the following:

''(d) SUBCOMMITTEES AND WORKING GROUPS.—

''(1) IN GENERAL.—There shall be a Subcommittee on Global Change Research, which shall carry out such functions of the Committee as the Committee may assign to it.

''(2) MEMBERSHIP.—The membership of the Subcommittee shall consist of—

''(A) the membership of the Subcommittee on Global Change Research of the Committee on Environment and Natural Resources (the functions of which are transferred to the Subcommittee established by this subsection) established by the National Science and Technology Council; and

''(B) such additional members as the Chair of the Committee may, from time to time, appoint.

''(3) CHAIR.—A high ranking official of one of the departments or agencies described in subsection (b), appointed by the Chair of the Committee with advice from the Chairman of the Council, shall chair the subcommittee. The Chairperson shall be knowledgeable and experienced with regard to the administration of scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the Program.

''(4) OTHER SUBCOMMITTEES AND WORKING GROUPS.—The Committee may establish such additional subcommittees and working groups as it sees fit.''.

SEC. 1334. CHANGE IN NATIONAL GLOBAL CHANGE RESEARCH PLAN.

Section 104 (15 U.S.C. 2934) is amended—

(1) by inserting ''short-term and long-term'' before ''goals'' in subsection (b)(1);

(2) by striking ''usable information on which to base policy decisions related to'' in subsection (b)(1) and inserting ''information relevant and readily usable by local, State, and Federal decisionmakers, as well as other end-users, for the formulation of effective decisions and strategies for measuring, predicting, preventing, mitigating, and adapting to'';

(3) by adding at the end of subsection (c) the following:

''(6) Methods for integrating information to provide predictive and other tools for planning and decisionmaking by governments, communities and the private sector.'';

(4) by striking subsection (d)(3) and inserting the following:

''(3) combine and interpret data from various sources to produce information readily usable by local, State, and Federal policymakers, and other end-users, attempting to formulate effective decisions and strategies for preventing, mitigating, and adapting to the effects of global change.'';

(5) by striking ''and'' in subsection (d)(2);

(6) by striking ''change.'' in subsection (d)(3) and inserting ''change; and'';

(7) by adding at the end of subsection (d) the following:

''(4) establish a common assessment and modeling framework that may be used in both research and operations to predict and assess the vulnerability of natural and managed ecosystems and of human society in the context of other environmental and social changes.''; and

(8) by adding at the end the following:

''(g) STRATEGIC PLAN; REVISED IMPLEMENTATION PLAN.—The Chairman of the Council, through the Committee, shall develop a strategic plan for the United States Global Climate Change Research Program for the 10-year period beginning in 2002 and submit the plan to the Congress within 180 days after the date of enactment of the Global Climate Change Act of 2002. The Chairman, through the Committee, shall also submit revised implementation plans as required under subsection (a).''.

SEC. 1335. INTEGRATED PROGRAM OFFICE.

Section 105 (15 U.S.C. 2935) is amended—

(1) by redesignating subsections (a), (b), and (c) as subsections (b), (c), and (d), respectively; and

(2) by inserting before subsection (b), as redesignated, the following:

''(a) INTEGRATED PROGRAM OFFICE.—

''(1) ESTABLISHMENT.—There is established in the Office of Science and Technology Policy an integrated program office for the global change research program.

''(2) ORGANIZATION.—The integrated program office established under paragraph (1) shall be headed by the associate director with responsibility for climate change science and technology and shall include, to the maximum extent feasible, a representative from each Federal agency participating in the global change research program.

''(3) FUNCTION.—The integrated program office shall—

''(A) manage, working in conjunction with the Committee, interagency coordination and program integration of global change research activities and budget requests;

''(B) ensure that the activities and programs of each Federal agency or department participating in the program address the goals and objectives identified in the strategic research plan and interagency implementation plans;

''(C) ensure program and budget recommendations of the Committee are communicated to the President and are integrated into the climate change action strategy;

''(D) review, solicit, and identify, and allocate funds for, partnership projects that address critical research objectives or operational goals of the program, including projects that would fill research gaps identified by the program, and for which project resources are shared among at least two agencies participating in the program; and

''(E) review and provide recommendations on, in conjunction with the Committee, all annual appropriations requests from Federal agencies or departments participating in the program.'';

(3) by striking ''Committee.'' in paragraph (2) of subsection (c), as redesignated, and inserting ''Committee and the Integrated Program Office.''; and

(4) by inserting ''and the Integrated Program Office'' after ''Committee'' in paragraph (1) of subsection (d), as redesignated.

SEC. 1336. RESEARCH GRANTS.

Section 105 (15 U.S.C. 2935) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) RESEARCH GRANTS.—

''(1) COMMITTEE TO DEVELOP LIST OF PRIORITY RESEARCH AREAS.—The Committee shall develop a list of priority areas for research and development on climate change that are not being addressed by Federal agencies.

''(2) DIRECTOR OF OSTP TO TRANSMIT LIST TO NSF.—The Director of the Office of Science and Technology Policy shall transmit the list to the National Science Foundation.

''(3) FUNDING THROUGH NSF.—

''(A) BUDGET REQUEST.—The National Science Foundation shall include, as part of the annual request for appropriations for the Science and Technology Policy Institute, a request for appropriations to fund research in the priority areas on the list developed under paragraph (1).

''(B) AUTHORIZATION.—For fiscal year 2003 and each fiscal year thereafter, there are authorized to be appropriated to the National Science Foundation not less than $17,000,000, to be made available through the Science and Technology Policy Institute, for research in those priority areas.''.

SEC. 1337. EVALUATION OF INFORMATION.

Section 106 (15 U.S.C. 2936) is amended—

(1) by striking ''**Scientific**'' in the section heading;

(2) by striking ''and'' after the semicolon in paragraph (2); and

(3) by striking ''years.'' in paragraph (3) and inserting ''years; and''; and

(4) by adding at the end the following:

''(4) evaluates the information being developed under this title, considering in particular its usefulness to local, State, and national decisionmakers, as well as to other stakeholders such as the private sector, after providing a meaningful opportunity for the consideration of the views of such stakeholders on the effectiveness of the Program and the usefulness of the information.''.

PART II—NATIONAL CLIMATE SERVICES AND MONITORING

SEC. 1341. AMENDMENT OF NATIONAL CLIMATE PROGRAM ACT.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the National Climate Program Act (15 U.S.C. 2901 et seq.).

SEC. 1342. CHANGES IN FINDINGS.

Section 2 (15 U.S.C. 2901) is amended—

(1) by striking ''Weather and climate change affect'' in paragraph (1) and inserting ''Weather, climate change, and climate variability affect public safety, environmental security, human health,'';

(2) by striking ''climate'' in paragraph (2) and inserting ''climate, including seasonal and decadal fluctuations,'';

(3) by striking ''changes.'' in paragraph (5) and inserting ''changes and providing free exchange of meteorological data.''; and

(4) by adding at the end the following:

''(7) The present rate of advance in research and development and application of such advances is inadequate and new developments must be incorporated rapidly into services for the benefit of the public.

''(8) The United States lacks adequate infrastructure and research to meet national climate monitoring and prediction needs.''.

SEC. 1343. TOOLS FOR REGIONAL PLANNING.

Section 5(d) (15 U.S.C. 2904(d)) is amended—

(1) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10), respectively;

(2) by inserting after paragraph (3) the following:

''(4) methods for improving modeling and predictive capabilities and developing assessment methods to guide national, regional, and local planning and decisionmaking on land use, water hazards, and related issues;'';

(3) by inserting ''sharing,'' after ''collection,'' in paragraph (5), as redesignated;

(4) by striking ''experimental'' each place it appears in paragraph (9), as redesignated;

(5) by striking ''preliminary'' in paragraph (10), as redesignated;

(6) by striking ''this Act,'' the first place it appears in paragraph (10), as redesignated, and inserting ''the Global Climate Change Act of 2002,''; and

(7) by striking ''this Act,'' the second place it appears in paragraph (10), as redesignated, and inserting ''that Act,''.

SEC. 1344. AUTHORIZATION OF APPROPRIATIONS.

Section 9 (15 U.S.C. 2908) is amended—

(1) by striking ''1979,'' and inserting ''2002,'';

(2) by striking ''1980,'' and inserting ''2003,'';

(3) by striking ''1981,'' and inserting ''2004,''; and

(4) by striking ''$25,500,000'' and inserting ''$75,500,000''.

SEC. 1345. NATIONAL CLIMATE SERVICE PLAN.

The Act (15 U.S.C. 2901 et seq.) is amended by inserting after section 5 the following:

''SEC. 6. NATIONAL CLIMATE SERVICE PLAN.

''Within 1 year after the date of enactment of the Global Climate Change Act of 2002, the Secretary of Commerce shall submit to the Senate Committee on Commerce, Science, and Transportation and the House Science Committee a plan of action for a National Climate Service under the National Climate Program. The plan shall set forth recommendations and funding estimates for—

''(1) a national center for operational climate monitoring and predicting with the functional capacity to monitor and adjust observing systems as necessary to reduce bias;

''(2) the design, deployment, and operation of an adequate national climate observing system that builds upon existing environmental monitoring systems and closes gaps in coverage by existing systems;

''(3) the establishment of a national coordinated modeling strategy, including a national climate modeling center to provide a dedicated capability for climate modeling and a regular schedule of projections on a long- and short-term time schedule and at a range of spatial scales;

''(4) improvements in modeling and assessment capabilities needed to integrate information to predict regional and local climate changes and impacts;

''(5) in coordination with the private sector, improving the capacity to assess the impacts of predicted and projected climate changes and variations;

''(6) a program for long-term stewardship, quality control, development of relevant climate products, and efficient access to all relevant climate data, products, and critical model simulations; and

''(7) mechanisms to coordinate among Federal agencies, State, and local government entities and the academic community to ensure timely and full sharing and dissemination of climate information and services, both domestically and internationally.''.

SEC. 1346. INTERNATIONAL PACIFIC RESEARCH AND COOPERATION.

The Secretary of Commerce, in cooperation with the Administrator of the National Aeronautics and Space Administration, shall conduct international research in the Pacific region that will increase understanding of the nature and predictability of climate variability in the Asia-Pacific sector, including regional aspects of global environmental change. Such research activities shall be conducted in cooperation with other nations of the region. There are authorized to be appropriated for purposes of this section $1,500,000 to the National Oceanic and Atmospheric Administration, $1,500,000 to the National Aeronautics and Space Administration, and $500,000 for the Pacific ENSO Applications Center.

SEC. 1347. REPORTING ON TRENDS.

(a) ATMOSPHERIC MONITORING AND VERIFICATION PROGRAM.—The Secretary of Commerce, in coordination with relevant Federal agencies, shall, as part of the National Climate Service, establish an atmospheric monitoring and verification program utilizing aircraft, satellite, ground sensors, and modeling capabilities to monitor, measure, and verify atmospheric greenhouse gas levels, dates, and emissions. Where feasible, the program shall measure emissions from identified sources participating in the reporting system for verification purposes. The program shall use measurements and standards that are consistent with those utilized in the greenhouse gas measurement and reporting system established under subsection (a) and the registry established under section 1102.

(b) ANNUAL REPORTING.—The Secretary of Commerce shall issue an annual report that identifies greenhouse emissions and trends on a local, regional, and national level. The report shall also identify emissions or reductions attributable to individual or multiple sources covered by the greenhouse gas measurement and reporting system established under section 1102.

SEC. 1348. ARCTIC RESEARCH AND POLICY.

(a) ARCTIC RESEARCH COMMISSION.—Section 103(d) of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4102(d)) is amended—

(1) by striking ''exceed 90 days'' in the second sentence of paragraph (1) and inserting ''exceed, in the case of the chairperson of the Commission, 120 days, and, in the case of any other member of the Commission, 90 days,'';

(2) by striking ''Chairman'' in paragraph (2) and inserting ''chairperson''.

(b) GRANTS.—Section 104 of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4103) is amended by adding at the end the following:

''(c) FUNDING FOR ARCTIC RESEARCH.—

''(1) IN GENERAL.—With the prior approval of the commission, or under authority delegated by the Commission, and subject to such conditions as the Commission may specify, the Executive Director appointed under section 106(a) may—

''(A) make grants to persons to conduct research concerning the Arctic; and

''(B) make funds available to the National Science Foundation or to Federal agencies for the conduct of research concerning the Arctic.

''(2) EFFECT OF ACTION BY EXECUTIVE DIRECTOR.—An action taken by the executive director under paragraph (1) shall be final and binding on the Commission.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as are necessary to carry out this section.''.

SEC. 1349. ABRUPT CLIMATE CHANGE RESEARCH.

(a) IN GENERAL.—The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, shall carry out a program of scientific research on potential abrupt climate change designed—

(1) to develop a global array of terrestrial and oceanographic indicators of paleoclimate in order sufficiently to identify and describe past instances of abrupt climate change;

(2) to improve understanding of thresholds and nonlinearities in geophysical systems related to the mechanisms of abrupt climate change;

(3) to incorporate these mechanisms into advanced geophysical models of climate change; and

(4) to test the output of these models against an improved global array of records of past abrupt climate changes.

(b) ABRUPT CLIMATE CHANGE DEFINED.—In this section, the term ''abrupt climate change'' means a change in climate that occurs so rapidly or unexpectedly that human or natural systems may have difficulty adapting to it.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $10,000,000 for each of the fiscal years 2003 through 2008, and such sums as may be necessary for fiscal years after fiscal year 2008, to carry out subsection (a).

PART III—OCEAN AND COASTAL OBSERVING SYSTEM

SEC. 1351. OCEAN AND COASTAL OBSERVING SYSTEM.

(a) ESTABLISHMENT.—The President, through the National Ocean Research Leadership Council, established by section 7902(a) of title 10, United States Code, shall establish and maintain an integrated ocean and coastal observing system that provides for long-term, continuous, and real-time observations of the oceans and coasts for the purposes of—

(1) understanding, assessing and responding to human-induced and natural processes of global change;

(2) improving weather forecasts and public warnings;

(3) strengthening national security and military preparedness;

(4) enhancing the safety and efficiency of marine operations;

(5) supporting efforts to restore the health of and manage coastal and marine ecosystems and living resources;

(6) monitoring and evaluating the effectiveness of ocean and coastal environmental policies;

(7) reducing and mitigating ocean and coastal pollution; and

(8) providing information that contributes to public awareness of the state and importance of the oceans.

(b) COUNCIL FUNCTIONS.—In addition to its responsibilities under section 7902(a) of such title, the Council shall be responsible for planning and coordinating the observing system and in carrying out this responsibility shall—

(1) develop and submit to the Congress, within 6 months after the date of enactment of this Act, a plan for implementing a national ocean and coastal observing system that—

(A) uses an end-to-end engineering and development approach to develop a system design and schedule for operational implementation;

(B) determines how current and planned observing activities can be integrated in a cost-effective manner;

(C) provides for regional and concept demonstration projects;

(D) describes the role and estimated budget of each Federal agency in implementing the plan;

(E) contributes, to the extent practicable, to the National Global Change Research Plan under section 104 of the Global Change Research Act of 1990 (15 U.S.C. 2934); and

(F) makes recommendations for coordination of ocean observing activities of the United States with those of other nations and international organizations;

(2) serve as the mechanism for coordinating Federal ocean observing requirements and activities;

(3) work with academic, State, industry and other actual and potential users of the observing system to make effective use of existing capabilities and incorporate new technologies;

(4) approve standards and protocols for the administration of the system, including—

(A) a common set of measurements to be collected and distributed routinely and by uniform methods;

(B) standards for quality control and assessment of data;

(C) design, testing and employment of forecast models for ocean conditions;

(D) data management, including data transfer protocols and archiving; and

(E) designation of coastal ocean observing regions; and

(5) in consultation with the Secretary of State, provide representation at international meetings on ocean observing programs and coordinate relevant Federal activities with those of other nations.

(c) SYSTEM ELEMENTS.—The integrated ocean and coastal observing system shall include the following elements:

(1) A nationally coordinated network of regional coastal ocean observing systems that measure and disseminate a common set of ocean observations and related products in a uniform manner and according to sound scientific practice, but that are adapted to local and regional needs.

(2) Ocean sensors for climate observations, including the Arctic Ocean and sub-polar seas.

(3) Coastal, relocatable, and cabled sea floor observatories.

(4) Broad bandwidth communications that are capable of transmitting high volumes of data from open ocean locations at low cost and in real time.

(5) Ocean data management and assimilation systems that ensure full use of new sources of data from space-borne and in situ sensors.

(6) Focused research programs.

(7) Technology development program to develop new observing technologies and techniques, including data management and dissemination.

(8) Public outreach and education.

SEC. 1352. AUTHORIZATION OF APPROPRIATIONS.

For development and implementation of an integrated ocean and coastal observation system under this title, including financial assistance to regional coastal ocean observing systems, there are authorized to be appropriated $235,000,000 in fiscal year 2003, $315,000,000 in fiscal year 2004, $390,000,000 in fiscal year 2005, and $445,000,000 in fiscal year 2006.

Subtitle E—Climate Change Technology

SEC. 1361. NIST GREENHOUSE GAS FUNCTIONS.

Section 2(c) of the National Institute of Standards and Technology Act (15 U.S.C. 272(c)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (21);

(2) by redesignating paragraph (22) as paragraph (23); and

(3) by inserting after paragraph (21) the following:

''(22) perform research to develop enhanced measurements, calibrations, standards, and technologies which will enable the reduced production in the United States of greenhouse gases associated with global warming, including carbon dioxide, methane, nitrous oxide, ozone, perfluorocarbons, hydrofluorocarbons, and sulfur hexafluoride; and''.

SEC. 1362. DEVELOPMENT OF NEW MEASUREMENT TECHNOLOGIES.

The Secretary of Commerce shall initiate a program to develop, with technical assistance from appropriate Federal agencies, innovative standards and measurement technologies (including technologies to measure carbon changes due to changes in land use cover) to calculate—

(1) greenhouse gas emissions and reductions from agriculture, forestry, and other land use practices;

(2) noncarbon dioxide greenhouse gas emissions from transportation;

(3) greenhouse gas emissions from facilities or sources using remote sensing technology; and

(4) any other greenhouse gas emission or reductions for which no accurate or reliable measurement technology exists.

SEC. 1363. ENHANCED ENVIRONMENTAL MEASUREMENTS AND STANDARDS.

The National Institute of Standards and Technology Act (15 U.S.C. 271 et seq.) is amended—

(1) by redesignating sections 17 through 32 as sections 18 through 33, respectively; and

(2) by inserting after section 16 the following:

''SEC. 17. CLIMATE CHANGE STANDARDS AND PROCESSES.

''(a) IN GENERAL.—The Director shall establish within the Institute a program to perform and support research on global climate change standards and processes, with the goal of providing scientific and technical knowledge applicable to the reduction of greenhouse gases (as defined in section 4 of the Global Climate Change Act of 2002).

''(b) RESEARCH PROGRAM.—

''(1) IN GENERAL.—The Director is authorized to conduct, directly or through contracts or grants, a global climate change standards and processes research program.

''(2) RESEARCH PROJECTS.—The specific contents and priorities of the research program shall be determined in consultation with appropriate Federal agencies, including the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and the National Aeronautics and Space Administration. The program generally shall include basic and applied research—

''(A) to develop and provide the enhanced measurements, calibrations, data, models, and reference material standards which will enable the monitoring of greenhouse gases;

''(B) to assist in establishing a baseline reference point for future trading in greenhouse gases and the measurement of progress in emissions reduction;

''(C) that will be exchanged internationally as scientific or technical information which has the stated purpose of developing mutually recognized measurements, standards, and procedures for reducing greenhouse gases; and

''(D) to assist in developing improved industrial processes designed to reduce or eliminate greenhouse gases.

''(c) NATIONAL MEASUREMENT LABORATORIES.—

''(1) IN GENERAL.—In carrying out this section, the Director shall utilize the collective skills of the National Measurement Laboratories of the National Institute of Standards and Technology to improve the accuracy of measurements that will permit better understanding and control of these industrial chemical processes and result in the reduction or elimination of greenhouse gases.

''(2) MATERIAL, PROCESS, AND BUILDING RESEARCH.—The National Measurement Laboratories shall conduct research under this subsection that includes—

''(A) developing material and manufacturing processes which are designed for energy efficiency and reduced greenhouse gas emissions into the environment;

''(B) developing environmentally-friendly, 'green' chemical processes to be used by industry; and

''(C) enhancing building performance with a focus in developing standards or tools which will help incorporate low- or no-emission technologies into building designs.

''(3) STANDARDS AND TOOLS.—The National Measurement Laboratories shall develop standards and tools under this subsection that include software to assist designers in selecting alternate building materials, performance data on materials, artificial intelligence-aided design procedures for building subsystems and 'smart buildings', and improved test methods and rating procedures for evaluating the energy performance of residential and commercial appliances and products.

''(d) NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM.—The Director shall utilize the National Voluntary Laboratory Accreditation Program under this section to establish a program to include specific calibration or test standards and related methods and protocols assembled to satisfy the unique needs for accreditation in measuring the production of greenhouse gases. In carrying out this subsection the Director may cooperate with other departments and agencies of the Federal Government, State and local governments, and private organizations.''.

SEC. 1364. TECHNOLOGY DEVELOPMENT AND DIFFUSION.

The Director of the National Institute of Standards and Technology, through the Manufacturing Extension Partnership Program, may develop a program to support the implementation of new ''green'' manufacturing technologies and techniques by the more than 380,000 small manufacturers.

SEC. 1365. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Director to carry out functions pursuant to sections 1345, 1351, and 1361 through 1363, $10,000,000 for fiscal years 2002 through 2006.

Subtitle F—Climate Adaptation and Hazards Prevention

PART I—ASSESSMENT AND ADAPTATION

SEC. 1371. REGIONAL CLIMATE ASSESSMENT AND ADAPTATION PROGRAM.

(a) IN GENERAL.—The President shall establish within the Department of Commerce a National Climate Change Vulnerability and Adaptation Program for regional impacts related to increasing concentrations of greenhouse gases in the atmosphere and climate variability.

(b) COORDINATION.—In designing such program the Secretary shall consult with the Federal Emergency Management Agency, the Environmental Protection Agency, the Army Corps of Engineers, the Department of Transportation, and other appropriate Federal, State, and local government entities.

(c) VULNERABILITY ASSESSMENTS.—The program shall—

(1) evaluate, based on predictions and other information developed under this Act and the National Climate Program Act (15 U.S.C. 2901 et

seq.), regional vulnerability to phenomena associated with climate change and climate variability, including—

(A) increases in severe weather events;

(B) sea level rise and shifts in the hydrological cycle;

(C) natural hazards, including tsunami, drought, flood and fire; and

(D) alteration of ecological communities, including at the ecosystem or watershed levels; and

(2) build upon predictions and other information developed in the National Assessments prepared under the Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.).

(d) PREPAREDNESS RECOMMENDATIONS.—The program shall submit a report to Congress within 2 years after the date of enactment of this Act that identifies and recommends implementation and funding strategies for short- and long-term actions that may be taken at the national, regional, State, and local level—

(1) to reduce vulnerability of human life and property;

(2) to improve resilience to hazards;

(3) to minimize economic impacts; and

(4) to reduce threats to critical biological and ecological processes.

(e) INFORMATION AND TECHNOLOGY.—The Secretary shall make available appropriate information and other technologies and products that will assist national, regional, State, and local efforts, as well as efforts by other end-users, to reduce loss of life and property, and coordinate dissemination of such technologies and products.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $4,500,000 to implement the requirements of this section.

SEC. 1372. COASTAL VULNERABILITY AND ADAPTATION.

(a) COASTAL VULNERABILITY.—Within 2 years after the date of enactment of this Act, the Secretary shall, in consultation with the appropriate Federal, State, and local governmental entities, conduct regional assessments of the vulnerability of coastal areas to hazards associated with climate change, climate variability, sea level rise, and fluctuation of Great Lakes water levels. The Secretary may also establish, as warranted, longer term regional assessment programs. The Secretary may also consult with the governments of Canada and Mexico as appropriate in developing such regional assessments. In preparing the regional assessments, the Secretary shall collect and compile current information on climate change, sea level rise, natural hazards, and coastal erosion and mapping, and specifically address impacts on Arctic regions and the Central, Western, and South Pacific regions. The regional assessments shall include an evaluation of—

(1) social impacts associated with threats to and potential losses of housing, communities, and infrastructure;

(2) physical impacts such as coastal erosion, flooding and loss of estuarine habitat, saltwater intrusion of aquifers and saltwater encroachment, and species migration; and

(3) economic impact on local, State, and regional economies, including the impact on abundance or distribution of economically important living marine resources.

(b) COASTAL ADAPTATION PLAN.—The Secretary shall, within 3 years after the date of enactment of this Act, submit to the Congress a national coastal adaptation plan, composed of individual regional adaptation plans that recommend targets and strategies to address coastal impacts associated with climate change, sea level rise, or climate variability. The plan shall be developed with the participation of other Federal, State, and local government agencies that will be critical in the implementation of the plan at the State and local levels. The regional plans that will make up the national coastal adaptation plan shall be based on the information contained in the regional assessments and shall identify special needs associated with Arctic areas and the Central, Western, and South Pacific regions. The Plan shall recommend both short- and long-term adaptation strategies and shall include recommendations regarding—

(1) Federal flood insurance program modifications;

(2) areas that have been identified as high risk through mapping and assessment;

(3) mitigation incentives such as rolling easements, strategic retreat, State or Federal acquisition in fee simple or other interest in land, construction standards, and zoning;

(4) land and property owner education;

(5) economic planning for small communities dependent upon affected coastal resources, including fisheries; and

(6) funding requirements and mechanisms.

(c) TECHNICAL PLANNING ASSISTANCE.—The Secretary, through the National Ocean Service, shall establish a coordinated program to provide technical planning assistance and products to coastal States and local governments as they develop and implement adaptation or mitigation strategies and plans. Products, information, tools and technical expertise generated from the development of the regional assessments and the regional adaptation plans will be made available to coastal States for the purposes of developing their own State and local plans.

(d) COASTAL ADAPTATION GRANTS.—The Secretary shall provide grants of financial assistance to coastal States with federally approved coastal zone management programs to develop and begin implementing coastal adaptation programs if the State provides a Federal-to-State match of 4 to 1 in the first fiscal year, 2.3 to 1 in the second fiscal year, 2 to 1 in the third fiscal year, and 1 to 1 thereafter. Distribution of these funds to coastal States shall be based upon the formula established under section 306(c) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455(c)), adjusted in consultation with the States as necessary to provide assistance to particularly vulnerable coastlines.

(e) COASTAL RESPONSE PILOT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a 4-year pilot program to provide financial assistance to coastal communities most adversely affected by the impact of climate change or climate variability that are located in States with federally approved coastal zone management programs.

(2) ELIGIBLE PROJECTS.—A project is eligible for financial assistance under the pilot program if it—

(A) will restore or strengthen coastal resources, facilities, or infrastructure that have been damaged by such an impact, as determined by the Secretary;

(B) meets the requirements of the Coastal Zone Management Act (16 U.S.C. 1451 et seq.) and is consistent with the coastal zone management plan of the State in which it is located; and

(C) will not cost more than $100,000.

(3) FUNDING SHARE.—The Federal funding share of any project under this subsection may not exceed 75 percent of the total cost of the project. In the administration of this paragraph—

(A) the Secretary may take into account in-kind contributions and other noncash support of any project to determine the Federal funding share for that project; and

(B) the Secretary may waive the requirements of this paragraph for a project in a community if—

(i) the Secretary determines that the project is important; and

(ii) the economy and available resources of the community in which the project is to be conducted are insufficient to meet the non-Federal share of the project's costs.

(f) DEFINITIONS.—Any term used in this section that is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453) has the meaning given it by that section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,000,000 annually for regional assessments under subsection (a), and $3,000,000 annually for coastal adaptation grants under subsection (d).

SEC. 1373. ARCTIC RESEARCH CENTER.

(a) ESTABLISHMENT.—The Secretary of Commerce, in consultation with the Secretaries of Energy and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, shall establish a joint research facility, to be known as the Barrow Arctic Research Center, to support climate change and other scientific research activities in the Arctic.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretaries of Commerce, Energy, and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, $35,000,000 for the planning, design, construction, and support of the Barrow Arctic Research Center.

PART II—FORECASTING AND PLANNING PILOT PROGRAMS

SEC. 1381. REMOTE SENSING PILOT PROJECTS.

(a) IN GENERAL.—The Administrator of the National Aeronautics and Space Administration may establish, through the National Oceanic and Atmospheric Administration's Coastal Services Center, a program of grants for competitively awarded pilot projects to explore the integrated use of sources of remote sensing and other geospatial information to address State, local, regional, and tribal agency needs to forecast a plan for adaptation to coastal zone and land use changes that may result as a consequence of global climate change or climate variability.

(b) PREFERRED PROJECTS.—In awarding grants under this section, the Center shall give preference to projects that—

(1) focus on areas that are most sensitive to the consequences of global climate change or climate variability;

(2) make use of existing public or commercial data sets;

(3) integrate multiple sources of geospatial information, such as geographic information system data, satellite-provided positioning data, and remotely sensed data, in innovative ways;

(4) offer diverse, innovative approaches that may serve as models for establishing a future coordinated framework for planning strategies for adaptation to coastal zone and land use changes related to global climate change or climate variability;

(5) include funds or in-kind contributions from non-Federal sources;

(6) involve the participation of commercial entities that process raw or lightly processed data, often merging that data with other geospatial information, to create data products that have significant value added to the original data; and

(7) taken together demonstrate as diverse a set of public sector applications as possible.

(c) OPPORTUNITIES.—In carrying out this section, the Center shall seek opportunities to assist—

(1) in the development of commercial applications potentially available from the remote sensing industry; and

(2) State, local, regional, and tribal agencies in applying remote sensing and other geospatial information technologies for management and adaptation to coastal and land use consequences of global climate change or climate variability.

(d) DURATION.—Assistance for a pilot project under subsection (a) shall be provided for a period of not more than 3 years.

(e) RESPONSIBILITIES OF GRANTEES.—Within 180 days after completion of a grant project, each recipient of a grant under subsection (a) shall transmit a report to the Center on the results of the pilot project and conduct at least

one workshop for potential users to disseminate the lessons learned from the pilot project as widely as feasible.

(f) REGULATIONS.—The Center shall issue regulations establishing application, selection, and implementation procedures for pilot projects, and guidelines for reports and workshops required by this section.

SEC. 1382. DATABASE ESTABLISHMENT.

The Center shall establish and maintain an electronic, Internet-accessible database of the results of each pilot project completed under section 1381.

SEC. 1383. AIR QUALITY RESEARCH, FORECASTS AND WARNINGS.

(a) REGIONAL STUDIES.—The Secretary of Commerce, through the Administrator of the National Oceanographic and Atmospheric Administration, shall, in order of priority as listed in section (c), conduct regional studies of the air quality within specific regions of the United States. Such studies should assess the effects of in situ emissions of air pollutants and their precursors, transport of such emissions and precursors from outside the region, and production of air pollutants within the region via chemical reactions.

(b) FORECASTS AND WARNINGS.—The Secretary of Commerce, through the Administrator of the National Oceanographic and Atmospheric Administration, shall, in order of priority as listed in section (c), establish a program to provide operational air quality forecasts and warnings for specific regions of the United States.

(c) DEFINITION.—For the purposes of this section, the term ''specific regions of the United States'' means the following geographical areas:

(1) the Northeast, composed of Main, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, the District of Columbia, and West Virginia;

(2) the Southeast, composed of Virginia, North Carolina, South Carolina, Georgia, Alabama, and Florida;

(3) the Midwest, composed of Minnesota, Wisconsin, Iowa, Missouri, Illinois, Kentucky, Indiana, Ohio, and Michigan;

(4) the South, composed of Tennessee, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas;

(5) the High Plains, composed of North Dakota, South Dakota, Nebraska, and Kansas;

(6) the Northwest, composed of Washington, Oregon, Idaho, Montana, and Wyoming;

(7) the Southwest, composed of California, Nevada, Utah, Colorado, Arizona, and New Mexico;

(8) Alaska; and

(9) Hawaii.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $3,000,000 for each of fiscal years 2003 through 2006 for studies pursuant to subsection (b) of this section, and $5,000,000 for fiscal year 2003 and such sums as may be necessary for subsequent fiscal years for the forecast and warning program pursuant to subsection (c) of this section.

SEC. 1384. DEFINITIONS.

In this subtitle:

(1) CENTER.—The term ''Center'' means the Coastal Services Center of the National Oceanic and Atmospheric Administration.

(2) GEOSPATIAL INFORMATION.—The term ''geospatial information'' means knowledge of the nature and distribution of physical and cultural features on the landscape based on analysis of data from airborne or spaceborne platforms or other types and sources of data.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

SEC. 1385. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator to carry out the provisions of this subtitle—

(1) $17,500,000 for fiscal year 2003;

(2) $20,000,000 for fiscal year 2004;

(3) $22,500,000 for fiscal year 2005; and

(4) $25,000,000 for fiscal year 2006.

TITLE XIV—MANAGEMENT OF DOE SCIENCE AND TECHNOLOGY PROGRAMS

SEC. 1401. DEFINITIONS.

In this title:

(1) APPLICABILITY OF DEFINITIONS.—The definitions in section 1203 shall apply.

(2) SINGLE-PURPOSE RESEARCH FACILITY.—The term ''single-purpose research facility'' means any of the following primarily single purpose entities owned by the Department of Energy—

(A) Ames Laboratory;

(B) East Tennessee Technology Park;

(C) Environmental Measurement Laboratory;

(D) Fernald Environmental Management Project;

(E) Fermi National Accelerator Laboratory;

(F) Kansas City Plant;

(G) Nevada Test Site;

(H) New Brunswick Laboratory;

(I) Pantex Weapons Facility;

(J) Princeton Plasma Physics Laboratory;

(K) Savannah River Technology Center;

(L) Stanford Linear Accelerator Center;

(M) Thomas Jefferson National Accelerator Facility;

(N) Y–12 facility at Oak Ridge National Laboratory;

(O) Waste Isolation Pilot Plant; or

(P) other similar organization of the Department designated by the Secretary that engages in technology transfer, partnering, or licensing activities.

SEC. 1402. AVAILABILITY OF FUNDS.

Funds authorized to be appropriated to the Department of Energy under title XII, title XIII, and title XV shall remain available until expended.

SEC. 1403. COST SHARING.

(a) RESEARCH AND DEVELOPMENT.—For research and development projects funded from appropriations authorized under subtitles A through D of title XII, the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this subsection if the Secretary determines that the research and development is of a basic or fundamental nature.

(b) DEMONSTRATION AND DEPLOYMENT.—For demonstration and technology deployment activities funded from appropriations authorized under subtitles A through D of title XII, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs of the project directly and specifically related to any demonstration or technology deployment activity. The Secretary may reduce or eliminate the non-Federal requirement under this subsection if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet one or more goals of this title.

(c) CALCULATION OF AMOUNT.—In calculating the amount of the non-Federal commitment under subsection (a) or (b), the Secretary shall include cash, personnel, services, equipment, and other resources.

SEC. 1404. MERIT REVIEW OF PROPOSALS.

Awards of funds authorized under title XII, subtitle A of title XIII, and title XV shall be made only after an independent review of the scientific and technical merit of the proposals for such awards has been made by the Department of Energy.

SEC. 1405. EXTERNAL TECHNICAL REVIEW OF DEPARTMENTAL PROGRAMS.

(a) NATIONAL ENERGY RESEARCH AND DEVELOPMENT ADVISORY BOARDS.—(1) The Secretary shall establish an advisory board to oversee Department research and development programs in each of the following areas—

(A) energy efficiency;

(B) renewable energy;

(C) fossil energy;

(D) nuclear energy; and

(E) climate change technology, with emphasis on integration, collaboration, and other special features of the cross-cutting technologies supported by the Office of Climate Change Technology.

(2) The Secretary may designate an existing advisory board within the Department to fulfill the responsibilities of an advisory board under this subsection, or may enter into appropriate arrangements with the National Academy of Sciences to establish such an advisory board.

(b) UTILIZATION OF EXISTING COMMITTEES.—The Secretary of Energy shall continue to use the scientific program advisory committees chartered under the Federal Advisory Committee Act by the Office of Science to oversee research and development programs under that Office.

(c) MEMBERSHIP.—Each advisory board under this section shall consist of experts drawn from industry, academia, Federal laboratories, research institutions, or State, local, or tribal governments, as appropriate.

(d) MEETINGS AND PURPOSES.—Each advisory board under this section shall meet at least semi-annually to review and advise on the progress made by the respective research, development, demonstration, and technology deployment program. The advisory board shall also review the adequacy and relevance of the goals established for each program by Congress and the President, and may otherwise advise on promising future directions in research and development that should be considered by each program.

SEC. 1406. IMPROVED COORDINATION AND MANAGEMENT OF CIVILIAN SCIENCE AND TECHNOLOGY PROGRAMS.

(a) EFFECTIVE TOP-LEVEL COORDINATION OF RESEARCH AND DEVELOPMENT PROGRAMS.—Section 202(b) of the Department of Energy Organization Act (42 U.S.C. 7132(b)) is amended to read as follows:

''(b)(1) There shall be in the Department an Under Secretary for Energy and Science, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(2) The Under Secretary for Energy and Science shall be appointed from among persons who—

''(A) have extensive background in scientific or engineering fields; and

''(B) are well qualified to manage the civilian research and development programs of the Department of Energy.

''(3) The Under Secretary for Energy and Science shall—

''(A) serve as the Science and Technology Advisor to the Secretary;

''(B) monitor the Department's research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

''(C) advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department;

''(D) advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

''(E) advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

''(F) exercise authority and responsibility over Assistant Secretaries carrying out energy research and development and energy technology functions under sections 203 and 209, as well as other elements of the Department assigned by the Secretary.''.

(b) RECONFIGURATION OF POSITION OF DIRECTOR OF THE OFFICE OF SCIENCE.—Section 209 of the Department of Energy Organization Act (41 U.S.C. 7139) is amended to read as follows:

''(a) There shall be within the Department an Office of Science, to be headed by an Assistant Secretary of Science, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) The Assistant Secretary of Science shall be in addition to the Assistant Secretaries provided for under section 203 of this Act.

''(c) It shall be the duty and responsibility of the Assistant Secretary of Science to carry out the fundamental science and engineering research functions of the Department, including the responsibility for policy and management of such research, as well as other functions vested in the Secretary which he may assign to the Assistant Secretary.''.

(c) ADDITIONAL ASSISTANT SECRETARY POSITION TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR ENERGY ISSUES.—

(1) Section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)) is amended by striking ''There shall be in the Department six Assistant Secretaries'' and inserting ''Except as provided in section 209, there shall be in the Department seven Assistant Secretaries''.

(2) It is the sense of the Senate that the leadership for departmental missions in nuclear energy should be at the Assistant Secretary level.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 202 of the Department of Energy Organization Act (42 U.S.C. 7132) is further amended by adding the following at the end:

''(d) There shall be in the Department an Under Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe, consistent with this section. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(e) There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.''.

(2) Section 5314 of title 5, United States Code, is amended by striking ''Under Secretaries of Energy (2)'' and inserting ''Under Secretaries of Energy (3)''.

(3) Section 5315 of title 5, United States Code, is amended by—

(A) striking ''Director, Office of Science, Department of Energy.''; and

(B) striking ''Assistant Secretaries of Energy (6)'' and inserting ''Assistant Secretaries of Energy (8)''.

(4) The table of contents for the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended—

(A) by striking ''Section 209'' and inserting ''Sec. 209'';

(B) by striking ''213.'' and inserting ''Sec. 213.'';

(C) by striking ''214.'' and inserting ''Sec. 214.'';

(D) by striking ''215.'' and inserting ''Sec. 215.''; and

(E) by striking ''216.'' and inserting ''Sec. 216.''.

SEC. 1407. IMPROVED COORDINATION OF TECHNOLOGY TRANSFER ACTIVITIES.

(a) TECHNOLOGY TRANSFER COORDINATOR.—The Secretary shall appoint a Technology Transfer Coordinator to perform oversight of and policy development for technology transfer activities at the Department. The Technology Transfer Coordinator shall coordinate the activities of the Technology Partnerships Working Group, and shall oversee the expenditure of funds allocated to the Technology Partnership Working Group.

(b) TECHNOLOGY PARTNERSHIP WORKING GROUP.—The Secretary shall establish a Technology Partnership Working Group, which shall consist of representatives of the National Laboratories and single-purpose research facilities, to—

(1) coordinate technology transfer activities occurring at National Laboratories and single-purpose research facilities;

(2) exchange information about technology transfer practices; and

(3) develop and disseminate to the public and prospective technology partners information about opportunities and procedures for technology transfer with the Department.

SEC. 1408. TECHNOLOGY INFRASTRUCTURE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a Technology Infrastructure Program in accordance with this section.

(b) PURPOSE.—The purpose of the Technology Infrastructure Program shall be to improve the ability of National Laboratories or single-purpose research facilities to support departmental missions by—

(1) stimulating the development of technology clusters that can support departmental missions at the National Laboratories or single-purpose research facilities;

(2) improving the ability of National Laboratories or single-purpose research facilities to leverage and benefit from commercial research, technology, products, processes, and services; and

(3) encouraging the exchange of scientific and technological expertise between National Laboratories or single-purpose research facilities and—

(A) institutions of higher education,

(B) technology-related business concerns,

(C) nonprofit institutions, and

(D) agencies of State, tribal, or local governments,

that can support departmental missions at the National Laboratories and single-purpose research facilities.

(c) PROJECTS.—The Secretary shall authorize the Director of each National Laboratory or facility to implement the Technology Infrastructure Program at such National Laboratory or single-purpose research facility through projects that meet the requirements of subsections (d) and (e).

(d) PROGRAM REQUIREMENTS.—Each project funded under this section shall meet the following requirements:

(1) MINIMUM PARTICIPANTS.—Each project shall at a minimum include—

(A) a National Laboratory or single-purpose research facility; and

(B) one of the following entities—

(i) a business,

(ii) an institution of higher education,

(iii) a nonprofit institution, or

(iv) an agency of a State, local, or tribal government.

(2) COST SHARING.—

(A) MINIMUM AMOUNT.—Not less than 50 percent of the costs of each project funded under this section shall be provided from non-Federal sources.

(B) QUALIFIED FUNDING AND RESOURCES.—(i) The calculation of costs paid by the non-Federal sources to a project shall include cash, personnel, services, equipment, and other resources expended on the project.

(ii) Independent research and development expenses of Government contractors that qualify for reimbursement under section 31–205–18(e) of the Federal Acquisition Regulations issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) may be credited towards costs paid by non-Federal sources to a project, if the expenses meet the other requirements of this section.

(iii) No funds or other resources expended either before the start of a project under this section or outside the project's scope of work shall be credited toward the costs paid by the non-Federal sources to the project.

(3) COMPETITIVE SELECTION.—All projects in which a party other than the Department, a National Laboratory, or a single-purpose research facility receives funding under this section shall, to the extent practicable, be competitively selected by the National Laboratory or facility using procedures determined to be appropriate by the Secretary.

(4) ACCOUNTING STANDARDS.—Any participant that receives funds under this section, other than a National Laboratory or single-purpose research facility, may use generally accepted accounting principles for maintaining accounts, books, and records relating to the project.

(5) LIMITATIONS.—No Federal funds shall be made available under this section for—

(A) construction; or

(B) any project for more than 5 years.

(e) SELECTION CRITERIA.—

(1) THRESHOLD FUNDING CRITERIA.—The Secretary shall allocate funds under this section only if the Director of the National Laboratory or single-purpose research facility managing the project determines that the project is likely to improve the ability of the National Laboratory or single-purpose research facility to achieve technical success in meeting departmental missions.

(2) ADDITIONAL CRITERIA.—The Secretary shall require the Director of the National Laboratory or single-purpose research facility managing a project under this section to consider the following criteria in selecting a project to receive Federal funds—

(A) the potential of the project to succeed, based on its technical merit, team members, management approach, resources, and project plan;

(B) the potential of the project to promote the development of a commercially sustainable technology cluster, which will derive most of the demand for its products or services from the private sector, and which will support departmental missions at the participating National Laboratory or single-purpose research facility;

(C) the potential of the project to promote the use of commercial research, technology, products, processes, and services by the participating National Laboratory or single-purpose research facility to achieve its departmental mission or the commercial development of technological innovations made at the participating National Laboratory or single-purpose research facility;

(D) the commitment shown by non-Federal organizations to the project, based primarily on the nature and amount of the financial and other resources they will risk on the project;

(E) the extent to which the project involves a wide variety and number of institutions of higher education, nonprofit institutions, and technology-related business concerns that can support the missions of the participating National Laboratory or single-purpose research facility and that will make substantive contributions to achieving the goals of the project;

(F) the extent of participation in the project by agencies of State, tribal, or local governments that will make substantive contributions to achieving the goals of the project;

(G) the extent to which the project focuses on promoting the development of technology-related business concerns that are small business concerns or involves such small business concerns substantively in the project; and

(H) such other criteria as the Secretary determines to be appropriate.

(f) REPORT TO CONGRESS.—Not later than January 1, 2004, the Secretary shall report to Congress on whether the Technology Infrastructure Program should be continued and, if so, how the program should be managed.

(g) DEFINITIONS.—In this section:

(1) TECHNOLOGY CLUSTER.—The term ''technology cluster'' means a concentration of—

(A) technology-related business concerns;
(B) institutions of higher education; or
(C) other nonprofit institutions;
that reinforce each other's performance in the areas of technology development through formal or informal relationships.

(2) TECHNOLOGY-RELATED BUSINESS CONCERN.—The term ''technology-related business concern'' means a for-profit corporation, company, association, firm, partnership, or small business concern that—

(A) conducts scientific or engineering research,
(B) develops new technologies,
(C) manufactures products based on new technologies, or
(D) performs technological services.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section $10,000,000 for each of fiscal years 2003 and 2004.

SEC. 1409. SMALL BUSINESS ADVOCACY AND ASSISTANCE.

(a) SMALL BUSINESS ADVOCATE.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to appoint a small business advocate to—

(1) increase the participation of small business concerns, including socially and economically disadvantaged small business concerns, in procurement, collaborative research, technology licensing, and technology transfer activities conducted by the National Laboratory or single-purpose research facility;

(2) report to the Director of the National Laboratory or single-purpose research facility on the actual participation of small business concerns in procurement and collaborative research along with recommendations, if appropriate, on how to improve participation;

(3) make available to small business concerns training, mentoring, and clear, up-to-date information on how to participate in the procurement and collaborative research, including how to submit effective proposals;

(4) increase the awareness inside the National Laboratory or single-purpose research facility of the capabilities and opportunities presented by small business concerns; and

(5) establish guidelines for the program under subsection (b) and report on the effectiveness of such program to the Director of the National Laboratory or single-purpose research facility.

(b) ESTABLISHMENT OF SMALL BUSINESS ASSISTANCE PROGRAM.—The Secretary shall require the Director of each National Laboratory, and may require the director of a single-purpose research facility, to establish a program to provide small business concerns—

(1) assistance directed at making them more effective and efficient subcontractors or suppliers to the National Laboratory or single-purpose research facility; or

(2) general technical assistance, the cost of which shall not exceed $10,000 per instance of assistance, to improve the small business concern's products or services.

(c) USE OF FUNDS.—None of the funds expended under subsection (b) may be used for direct grants to the small business concerns.

(d) DEFINITIONS.—In this section:

(1) SMALL BUSINESS CONCERN.—The term ''small business concern'' has the meaning given such term in section 3 of the Small Business Act (15 U.S.C. 632).

(2) SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS.—The term ''socially and economically disadvantaged small business concerns'' has the meaning given such term in section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)).

SEC. 1410. OTHER TRANSACTIONS.

(a) IN GENERAL.—Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by adding at the end the following:

''(g) OTHER TRANSACTIONS AUTHORITY.—(1) In addition to other authorities granted to the Secretary to enter into procurement contracts, leases, cooperative agreements, grants, and other similar arrangements, the Secretary may enter into other transactions with public agencies, private organizations, or persons on such terms as the Secretary may deem appropriate in furtherance of basic, applied, and advanced research functions now or hereafter vested in the Secretary. Such other transactions shall not be subject to the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908).

''(2)(A) The Secretary of Energy shall ensure that—

''(i) to the maximum extent practicable, no transaction entered into under paragraph (1) provides for research that duplicates research being conducted under existing programs carried out by the Department of Energy; and

''(ii) to the extent that the Secretary determines practicable, the funds provided by the Government under a transaction authorized by paragraph (1) do not exceed the total amount provided by other parties to the transaction.

''(B) A transaction authorized by paragraph (1) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

''(3)(A) The Secretary shall not disclose any trade secret or commercial or financial information submitted by a non-Federal entity under paragraph (1) that is privileged and confidential.

''(B) The Secretary shall not disclose, for 5 years after the date the information is received, any other information submitted by a non-Federal entity under paragraph (1), including any proposal, proposal abstract, document supporting a proposal, business plan, or technical information that is privileged and confidential.

''(C) The Secretary may protect from disclosure, for up to 5 years, any information developed pursuant to a transaction under paragraph (1) that would be protected from disclosure under section 552(b)(4) of title 5, United States Code, if obtained from a person other than a Federal agency.''.

(b) IMPLEMENTATION.—Not later than 6 months after the date of enactment of this section, the Department shall establish guidelines for the use of other transactions.

SEC. 1411. MOBILITY OF SCIENTIFIC AND TECHNICAL PERSONNEL.

Not later than 2 years after the enactment of this section, the Secretary, acting through the Technology Transfer Coordinator under section 1407, shall determine whether each contractor operating a National Laboratory or single-purpose research facility has policies and procedures that do not create disincentives to the transfer of scientific and technical personnel among the contractor-operated National Laboratories or contractor-operated single-purpose research facilities.

SEC. 1412. NATIONAL ACADEMY OF SCIENCES REPORT.

Within 90 days after the date of enactment of this Act, the Secretary shall contract with the National Academy of Sciences to—

(1) conduct a study on the obstacles to accelerating the innovation cycle for energy technology, and

(2) report to the Congress recommendations for shortening the cycle of research, development, and deployment.

SEC. 1413. REPORT ON TECHNOLOGY READINESS AND BARRIERS TO TECHNOLOGY TRANSFER.

(a) IN GENERAL.—The Secretary, acting through the Technology Partnership Working Group and in consultation with representatives of affected industries, universities, and small business concerns, shall—

(1) assess the readiness for technology transfer of energy technologies developed through projects funded from appropriations authorized under subtitles A through D of title XIV, and

(2) identify barriers to technology transfer and cooperative research and development agreements between the Department or a National Laboratory and a non-Federal person; and

(3) make recommendations for administrative or legislative actions needed to reduce or eliminate such barriers.

(b) REPORT.—The Secretary shall provide a report to Congress and the President on activities carried out under this section not later than 1 year after the date of enactment of this section, and shall update such report on a biennial basis, taking into account progress toward eliminating barriers to technology transfer identified in previous reports under this section.

SEC. 1414. UNITED STATES-MEXICO ENERGY TECHNOLOGY COOPERATION.

(a) FINDING.—Congress finds that the economic and energy security of the United States and Mexico is furthered through collaboration between the United States and Mexico on research related to energy technologies.

(b) PROGRAM.—

(1) IN GENERAL.—The Secretary, acting through the Assistant Secretary for Environmental Management, shall establish a collaborative research, development, and deployment program to promote energy efficient, environmentally sound economic development along the United States-Mexico border to—

(A) mitigate hazardous waste;
(B) promote energy efficient materials processing technologies that minimize environmental damage; and
(C) protect the public health.

(2) CONSULTATION.—The Secretary, acting through the Assistant Secretary for Environmental Management, shall consult with the Office of Energy Efficiency and Renewable Energy in carrying out paragraph (1)(B).

(c) PROGRAM MANAGEMENT.—The program under subsection (b) shall be managed by the Department of Energy Carlsbad Environmental Management Field Office.

(d) COST SHARING.—The cost of any project or activity carried out using funds provided under this section shall be shared as provided in section 1403.

(e) TECHNOLOGY TRANSFER.—In carrying out projects and activities under this section to mitigate hazardous waste, the Secretary shall emphasize the transfer of technology developed under the Environmental Management Science Program of the Department of Energy.

(f) INTELLECTUAL PROPERTY.—In carrying out this section, the Secretary shall comply with the requirements of any agreement entered between the United States and Mexico regarding intellectual property protection.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2003 and $6,000,000 for each of fiscal years 2004 through 2006, to remain available until expended.

TITLE XV—PERSONNEL AND TRAINING

SEC. 1501. WORKFORCE TRENDS AND TRAINEESHIP GRANTS.

(a) WORKFORCE TRENDS.—

(1) MONITORING.—The Secretary of Energy (in this title referred to as the ''Secretary''), acting through the Administrator of the Energy Information Administration, in consultation with the Secretary of Labor, shall monitor trends in the workforce of skilled technical personnel supporting energy technology industries, including renewable energy industries, companies developing and commercializing devices to increase energy-efficiency, the oil and gas industry, the electric power generation industry (including the nuclear power industry), the coal industry, and other industrial sectors as the Secretary may deem appropriate.

(2) ANNUAL REPORTS.—The Administrator of the Energy Information Administration shall include statistics on energy industry workforce

trends in the annual reports of the Energy Information Administration.

(3) SPECIAL REPORTS.—The Secretary shall report to the appropriate committees of Congress whenever the Secretary determines that significant shortfalls of technical personnel in one or more energy industry segments are forecast or have occurred.

(b) TRAINEESHIP GRANTS FOR TECHNICALLY SKILLED PERSONNEL.—

(1) GRANT PROGRAMS.—The Secretary shall establish grant programs in the appropriate offices of the Department to enhance training of technically skilled personnel for which a shortfall is determined under subsection (a).

(2) ELIGIBLE INSTITUTIONS.—As determined by the Secretary to be appropriate to the particular workforce shortfall, the Secretary shall make grants under paragraph (1) to—

(A) an institution of higher education;

(B) a postsecondary educational institution providing vocational and technical education (within the meaning given those terms in section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2302));

(C) appropriate agencies of State, local, or tribal governments; or

(D) joint labor and management training organizations with State or federally recognized apprenticeship programs and other employee-based training organizations as the Secretary considers appropriate.

(c) DEFINITION.—For purposes of this section, the term ''skilled technical personnel'' means journey and apprentice level workers who are enrolled in or have completed a State or federally recognized apprenticeship program and other skilled workers in energy technology industries.

(d) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1241(c), there are authorized to be appropriated to the Secretary for activities under this section such sums as may be necessary for each fiscal year.

SEC. 1502. POSTDOCTORAL AND SENIOR RESEARCH FELLOWSHIPS IN ENERGY RESEARCH.

(a) POSTDOCTORAL FELLOWSHIPS.—The Secretary shall establish a program of fellowships to encourage outstanding young scientists and engineers to pursue postdoctoral research appointments in energy research and development at institutions of higher education of their choice. In establishing a program under this subsection, the Secretary may enter into appropriate arrangements with the National Academy of Sciences to help administer the program.

(b) DISTINGUISHED SENIOR RESEARCH FELLOWSHIPS.—The Secretary shall establish a program of fellowships to allow outstanding senior researchers in energy research and development and their research groups to explore research and development topics of their choosing for a fixed period of time. Awards under this program shall be made on the basis of past scientific or technical accomplishment and promise for continued accomplishment during the period of support, which shall not be less than 3 years.

(c) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1241(c), there are authorized to be appropriated to the Secretary for activities under this section such sums as may be necessary for each fiscal year.

SEC. 1503. TRAINING GUIDELINES FOR ELECTRIC ENERGY INDUSTRY PERSONNEL.

(a) MODEL GUIDELINES.—The Secretary shall, in cooperation with electric generation, transmission, and distribution companies and recognized representatives of employees of those entities, develop model employee training guidelines to support electric supply system reliability and safety.

(b) CONTENT OF GUIDELINES.—The guidelines under this section shall include—

(1) requirements for worker training, competency, and certification, developed using criteria set forth by the Utility Industry Group recognized by the National Skill Standards Board; and

(2) consolidation of existing guidelines on the construction, operation, maintenance, and inspection of electric supply generation, transmission and distribution facilities such as those established by the National Electric Safety Code and other industry consensus standards.

SEC. 1504. NATIONAL CENTER ON ENERGY MANAGEMENT AND BUILDING TECHNOLOGIES.

The Secretary shall establish a National Center on Energy Management and Building Technologies, to carry out research, education, and training activities to facilitate the improvement of energy efficiency and indoor air quality in industrial, commercial and residential buildings. The National Center shall be established in cooperation with—

(1) recognized representatives of employees in the heating, ventilation, and air-conditioning industry;

(2) contractors that install and maintain heating, ventilation and air-conditioning systems and equipment;

(3) manufacturers of heating, ventilation and air-conditioning systems and equipment;

(4) representatives of the advanced building envelope industry, including design, windows, lighting, and insulation industries; and

(5) other entities as appropriate.

SEC. 1505. IMPROVED ACCESS TO ENERGY-RELATED SCIENTIFIC AND TECHNICAL CAREERS.

(a) DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS.—Section 3164 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended by adding at the end the following:

''(c) PROGRAMS FOR WOMEN AND MINORITY STUDENTS.—In carrying out a program under subsection (a), the Secretary shall give priority to activities that are designed to encourage women and minority students to pursue scientific and technical careers.''.

(b) PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVICING INSTITUTIONS, AND TRIBAL COLLEGES.—The Department of Energy Science Education Enhancement Act (42 U.S.C. 7381 et seq.) is amended—

(1) by redesignating sections 3167 and 3168 as sections 3168 and 3169, respectively; and

(2) by inserting after section 3166 the following:

''SEC. 3167. PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVING INSTITUTIONS, AND TRIBAL COLLEGES.

''(a) DEFINITIONS.—In this section:

''(1) HISPANIC-SERVING INSTITUTION.—The term 'Hispanic-serving institution' has the meaning given the term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

''(2) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term 'historically Black college or university' has the meaning given the term 'part B institution' in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

''(3) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given the term in section 1203 of the Energy Science and Technology Enhancement Act of 2003.

''(4) SCIENCE FACILITY.—The term 'science facility' has the meaning given the term 'single-purpose research facility' in section 1401 of the Energy Science and Technology Enhancement Act of 2003.

''(5) TRIBAL COLLEGE.—The term 'tribal college' has the meaning given the term 'tribally controlled college or university' in section 2(a) of the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801(a)).

''(b) EDUCATION PARTNERSHIP.—

''(1) IN GENERAL.—The Secretary shall direct the Director of each National Laboratory, and may direct the head of any science facility, to increase the participation of historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges in activities that increase the capacity of the historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges to train personnel in science or engineering.

''(2) ACTIVITIES.—An activity under paragraph (1) may include—

''(A) collaborative research;

''(B) a transfer of equipment;

''(C) training of personnel at a National Laboratory or science facility; and

''(D) a mentoring activity by personnel at a National Laboratory or science facility.

''(c) REPORT.—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to the Committee on Science of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the activities carried out under this section.''.

SEC. 1506. NATIONAL POWER PLANT OPERATIONS TECHNOLOGY AND EDUCATION CENTER.

(a) ESTABLISHMENT.—The Secretary shall establish a National Power Plant Operations Technology and Education Center (the ''Center''), to address the need for training and educating certified operators for electric power generation plants.

(b) ROLE.—The Center shall provide both training and continuing education relating to electric power generation plant technologies and operations. The Center shall conduct training and education activities on site and through Internet-based information technologies that allow for learning at remote sites.

(c) CRITERIA FOR COMPETITIVE SELECTION.—The Secretary shall establish the Center at an institution of higher education with expertise in plant technology and operation and that can provide on-site as well as Internet-based training.

SEC. 1507. FEDERAL MINE INSPECTORS.

In light of projected retirements of Federal mine inspectors and the need for additional personnel, the Secretary of Labor shall hire, train, and deploy such additional skilled mine inspectors (particularly inspectors with practical experience as a practical mining engineer) as necessary to ensure the availability of skilled and experienced individuals and to maintain the number of Federal mine inspectors at or above the levels authorized by law or established by regulation.

DIVISION F—TECHNOLOGY ASSESSMENT AND STUDIES

TITLE XVI—TECHNOLOGY ASSESSMENT

SEC. 1601. NATIONAL SCIENCE AND TECHNOLOGY ASSESSMENT SERVICE.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 et seq.) is amended by adding at the end the following:

''TITLE VII—NATIONAL SCIENCE AND TECHNOLOGY ASSESSMENT SERVICE

''SEC. 701. ESTABLISHMENT.

''There is hereby created a Science and Technology Assessment Service (hereinafter referred to as the 'Service'), which shall be within and responsible to the legislative branch of the Government.

''SEC. 702. COMPOSITION.

''The Service shall consist of a Science and Technology Board (hereinafter referred to as the 'Board') which shall formulate and promulgate the policies of the Service, and a Director who shall carry out such policies and administer the operations of the Service.

''SEC. 703. FUNCTIONS AND DUTIES.

''The Service shall coordinate and develop information for Congress relating to the uses and application of technology to address current national science and technology policy issues. In developing such technical assessments for Congress, the Service shall utilize, to the extent practicable, experts selected in coordination with the National Research Council.

''SEC. 704. INITIATION OF ACTIVITIES.

''Science and technology assessment activities undertaken by the Service may be initiated upon the request of—

''(1) the Chairman of any standing, special, or select committee of either House of the Congress, or of any joint committee of the Congress, acting for himself or at the request of the ranking minority member or a majority of the committee members;

''(2) the Board; or

''(3) the Director.

''SEC. 705. ADMINISTRATION AND SUPPORT.

''The Director of the Science and Technology Assessment Service shall be appointed by the Board and shall serve for a term of 6 years unless sooner removed by the Board. The Director shall receive basic pay at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. The Director shall contract for administrative support from the Library of Congress.

''SEC. 706. AUTHORITY.

''The Service shall have the authority, within the limits of available appropriations, to do all things necessary to carry out the provisions of this section, including, but without being limited to, the authority to—

''(1) make full use of competent personnel and organizations outside the Office, public or private, and form special ad hoc task forces or make other arrangements when appropriate;

''(2) enter into contracts or other arrangements as may be necessary for the conduct of the work of the Office with any agency or instrumentality of the United States, with any State, territory, or possession or any political subdivision thereof, or with any person, firm, association, corporation, or educational institution, with or without reimbursement, without performance or other bonds, and without regard to section 3709 of the Revised Statutes (41 U.S.C. 51);

''(3) accept and utilize the services of voluntary and uncompensated personnel necessary for the conduct of the work of the Service and provide transportation and subsistence as authorized by section 5703 of title 5, United States Code, for persons serving without compensation; and

''(4) prescribe such rules and regulations as it deems necessary governing the operation and organization of the Service.

''SEC. 707. BOARD.

''The Board shall consist of 13 members as follows—

''(1) six Members of the Senate, appointed by the President pro tempore of the Senate, three from the majority party and three from the minority party;

''(2) six Members of the House of Representatives appointed by the Speaker of the House of Representatives, three from the majority party and three from the minority party; and

''(3) the Director, who shall not be a voting member.

''SEC. 708. REPORT TO CONGRESS.

''The Service shall submit to the Congress an annual report which shall include, but not be limited to, an evaluation of technology assessment techniques and identification, insofar as may be feasible, of technological areas and programs requiring future analysis. The annual report shall be submitted not later than March 15 of each year.

''SEC. 709. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to the Service such sums as are necessary to fulfill the requirements of this title.''.

TITLE XVII—STUDIES

SEC. 1701. REGULATORY REVIEWS.

(a) REGULATORY REVIEWS.—Not later than 1 year after the date of enactment of this section and every 5 years thereafter, each Federal agency shall review relevant regulations and standards to identify—

(1) existing regulations and standards that act as barriers to—

(A) market entry for emerging energy technologies (including fuel cells, combined heat and power, distributed power generation, and small-scale renewable energy), and

(B) market development and expansion for existing energy technologies (including combined heat and power, small-scale renewable energy, geothermal heat pump technology, and energy recovery in industrial processes), and

(2) actions the agency is taking or could take to—

(A) remove barriers to market entry for emerging energy technologies and to market expansion for existing technologies,

(B) increase energy efficiency and conservation, or

(C) encourage the use of new and existing processes to meet energy and environmental goals.

(b) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this section, and every 5 years thereafter, the Director of the Office of Science and Technology Policy shall report to the Congress on the results of the agency reviews conducted under subsection (a).

(c) CONTENTS OF THE REPORT.—The report shall—

(1) identify all regulatory barriers to—

(A) the development and commercialization of emerging energy technologies and processes, and

(B) the further development and expansion of existing energy conservation technologies and processes,

(2) actions taken, or proposed to be taken, to remove such barriers, and

(3) recommendations for changes in laws or regulations that may be needed to—

(A) expedite the siting and development of energy production and distribution facilities,

(B) encourage the adoption of energy efficiency and process improvements,

(C) facilitate the expanded use of existing energy conservation technologies, and

(D) reduce the environmental impacts of energy facilities and processes through transparent and flexible compliance methods.

SEC. 1702. ASSESSMENT OF DEPENDENCE OF STATE OF HAWAII ON OIL.

(a) ASSESSMENT.—The Secretary of Energy shall assess the economic implications of the dependence of the State of Hawaii on oil as the principal source of energy for the State, including—

(1) the short- and long-term prospects for crude oil supply disruption and price volatility and potential impacts on the economy of Hawaii;

(2) the economic relationship between oil-fired generation of electricity from residual fuel and refined petroleum products consumed for ground, marine, and air transportation;

(3) the technical and economic feasibility of increasing the contribution of renewable energy resources for generation of electricity, on an island-by-island basis, including—

(A) siting and facility configuration;

(B) environmental, operational, and safety considerations;

(C) the availability of technology;

(D) effects on the utility system, including reliability;

(E) infrastructure and transport requirements;

(F) community support; and

(G) other factors affecting the economic impact of such an increase and any effect on the economic relationship described in paragraph (2);

(4) the technical and economic feasibility of using liquefied natural gas to displace residual fuel oil for electric generation, including neighbor island opportunities, and the effect of such displacement on the economic relationship described in paragraph (2), including—

(A) the availability of supply;

(B) siting and facility configuration for onshore and offshore liquefied natural gas receiving terminals;

(C) the factors described in subparagraphs (B) through (F) of paragraph (3); and

(D) other economic factors;

(5) the technical and economic feasibility of using renewable energy sources (including hydrogen) for ground, marine, and air transportation energy applications to displace the use of refined petroleum products, on an island-by-island basis, and the economic impact of such displacement on the relationship described in paragraph (2); and

(6) an island-by-island approach to—

(A) the development of hydrogen from renewable resources; and

(B) the application of hydrogen to the energy needs of Hawaii.

(b) CONTRACTING AUTHORITY.—The Secretary may carry out the assessment under subsection (a) directly or, in whole or in part, through one or more contracts with qualified public or private entities.

(c) REPORT.—Not later than 300 days after the date of enactment of this Act, the Secretary shall prepare, in consultation with agencies of the State of Hawaii and other stakeholders, as appropriate, and submit to Congress, a report detailing the findings, conclusions, and recommendations resulting from the assessment.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 1703. STUDY OF SITING AN ELECTRIC TRANSMISSION SYSTEM ON AMTRAK RIGHT-OF-WAY.

(a) STUDY.—The Secretary of Energy shall contract with Amtrak to conduct a study of the feasibility of building and operating a new electric transmission system on the Amtrak right-of-way in the Northeast Corridor.

(b) SCOPE OF THE STUDY.—The study shall focus on siting the new system on the Amtrak right-of-way within the Northeast Corridor between Washington, D.C., and New Rochelle, New York, including the Amtrak right-of-way between Philadelphia, Pennsylvania and Harrisburg, Pennsylvania.

(c) CONTENTS OF THE STUDY.—The study shall consider—

(1) alternative geographic configuration of a new electronic transmission system on the Amtrak right-of-way;

(2) alternative technologies for the system;

(3) the estimated costs of building and operating each alternative;

(4) alternative means of financing the system;

(5) the environmental risks and benefits of building and operating each alternative as well as environmental risks and benefits of building and operating the system on the Northeast Corridor rather than at other locations;

(6) engineering and technological obstacles to building and operating each alternative; and

(7) the extent to which each alternative would enhance the reliability of the electric transmission grid and enhance competition in the sale of electric energy at wholesale within the Northeast Corridor.

(d) RECOMMENDATIONS.—The study shall recommend the optimal geographic configuration, the optimal technology, the optimal engineering design, and the optimal means of financing for the new system from among the alternatives considered.

(e) REPORT.—The Secretary of Energy shall submit the completed study to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Energy and Commerce of the House of Representatives not later than 270 days after the date of enactment of this section.

(f) DEFINITIONS.—For purposes of this section—

(1) the term ''Amtrak'' means the National Railroad Passenger Corporation established under chapter 243 of title 49, United States Code; and

(2) the term ''Northeast Corridor'' shall have the meaning given such term under section 24102(7) of title 49, United States Code.

SEC. 1704. UPDATING OF INSULAR AREA RENEWABLE ENERGY AND ENERGY EFFICIENCY PLANS.

Section 604 of Public Law 96–597 (48 U.S.C. 1492) is amended—

(1) in subsection (a) at the end of paragraph (4) by striking ''resources.'' and inserting ''resources; and

''(5) the development of renewable energy and energy efficiency technologies since publication of the 1982 Territorial Energy Assessment prepared under subsection (c) reveals the need to reassess the state of energy production, consumption, efficiency, infrastructure, reliance on imported energy, and potential of the indigenous renewable energy resources and energy efficiency in regard to the insular areas.''; and

(2) by adding at the end of subsection (e) ''The Secretary of Energy, in consultation with the Secretary of the Interior and the chief executive officer of each insular area, shall update the plans required under subsection (c) and draft long-term energy plans for each insular area that will reduce, to the extent feasible, the reliance of the insular area on energy imports by the year 2010, and maximize, to the extent feasible, use of renewable energy resources and energy efficiency opportunities. Not later than December 31, 2002, the Secretary of Energy shall submit the updated plans to Congress.''.

SEC. 1705. CONSUMER ENERGY COMMISSION.

(a) ESTABLISHMENT OF COMMISSION.—There is established a commission to be known as the ''Consumer Energy Commission''.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be comprised of 11 members who shall be appointed within 30 days from the date of enactment of this section and who shall serve for the life of the Commission.

(2) APPOINTMENTS IN THE SENATE AND THE HOUSE.—The Majority Leader and the Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives shall each appoint 2 members—

(A) one of whom shall represent consumer groups focusing on energy issues; and

(B) one of whom shall represent the energy industry.

(3) APPOINTMENTS BY THE PRESIDENT.—The President shall appoint three members—

(A) one of whom shall represent consumer groups focusing on energy issues;

(B) one of whom shall represent the energy industry; and

(C) one of whom shall represent the Department of Energy.

(c) INITIAL MEETING.—Not later than 60 days after the date of enactment of this Act, the Commission shall hold the first meeting of the Commission regardless of the number of members that have been appointed and shall select a Chairperson and Vice Chairperson from among the members of the Commission.

(d) ADMINISTRATIVE EXPENSES.—Members of the Commission shall serve without compensation, except for per diem and travel expenses which shall be reimbursed, and the Department of Energy shall pay expenses as necessary to carry out this section, with the expenses not to exceed $400,000.

(e) STUDIES.—The Commission shall conduct a nationwide study of significant price spikes since 1990 in major United States consumer energy products, including electricity, gasoline, home heating oil, natural gas and propane with a focus on their causes including insufficient inventories, supply disruptions, refinery capacity limits, insufficient infrastructure, regulatory failures, demand growth, reliance on imported supplies, insufficient availability of alternative energy sources, abuse of market power, market concentration and any other relevant factors.

(f) REPORT.—Not later than 180 days after the date of the first meeting of the Commission, the Commission shall submit to Congress a report that contains the findings and conclusions of the Commission and any recommendations for legislation, administrative actions, and voluntary actions by industry and consumers to protect consumers and small businesses from future price spikes in consumer energy products.

(g) CONSULTATION.—The Commission shall consult with the Federal Trade Commission, the Federal Energy Regulatory Commission, the Department of Energy and other Federal and State agencies as appropriate.

(h) SUNSET.—The Commission shall terminate within 30 days after the submission of the report to Congress.

SEC. 1706. STUDY OF NATURAL GAS AND OTHER ENERGY TRANSMISSION INFRASTRUCTURE ACROSS THE GREAT LAKES.

(a) DEFINITIONS.—In this section:

(1) GREAT LAKE.—The term ''Great Lake'' means Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, Lake Ontario (including the Saint Lawrence River from Lake Ontario to the 45th parallel of latitude), and Lake Superior.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(b) STUDY.—

(1) IN GENERAL.—The Secretary, in consultation with representatives of appropriate Federal and State agencies, shall—

(A) conduct a study of—

(i) the location and extent of anticipated growth of natural gas and other energy transmission infrastructure proposed to be constructed across the Great Lakes; and

(ii) the environmental impacts of any natural gas or other energy transmission infrastructure proposed to be constructed across the Great Lakes; and

(B) make recommendations for minimizing the environmental impact of pipelines and other energy transmission infrastructure on the Great Lakes ecosystem.

(2) ADVISORY COMMITTEE.—Not later than 30 days after the date of enactment of this Act, the Secretary shall enter into an agreement with the National Academy of Sciences to establish an advisory committee to ensure that the study is complete, objective, and of good quality.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the findings and recommendations resulting from the study under subsection (b).

SEC. 1707. NATIONAL ACADEMY OF SCIENCES STUDY OF PROCEDURES FOR SELECTION AND ASSESSMENT OF CERTAIN ROUTES FOR SHIPMENT OF SPENT NUCLEAR FUEL FROM RESEARCH NUCLEAR REACTORS.

(a) IN GENERAL.—The Secretary of Transportation shall enter into an agreement with the National Academy of Sciences under which agreement the National Academy of Sciences shall conduct a study of the procedures by which the Department of Energy, together with the Department of Transportation and the Nuclear Regulatory Commission, selects routes for the shipment of spent nuclear fuel from research nuclear reactors between or among existing Department of Energy facilities currently licensed to accept such spent nuclear fuel.

(b) ELEMENTS OF STUDY.—In conducting the study under subsection (a), the National Academy of Sciences shall analyze the manner in which the Department of Energy—

(1) selects potential routes for the shipment of spent nuclear fuel from research nuclear reactors between or among existing Department facilities currently licensed to accept such spent nuclear fuel;

(2) selects such a route for a specific shipment of such spent nuclear fuel; and

(3) conducts assessments of the risks associated with shipments of such spent nuclear fuel along such a route.

(c) CONSIDERATIONS REGARDING ROUTE SELECTION.—The analysis under subsection (b) shall include a consideration whether, and to what extent, the procedures analyzed for purposes of that subsection take into account the following:

(1) The proximity of the routes under consideration to major population centers and the risks associated with shipments of spent nuclear fuel from research nuclear reactors through densely populated areas.

(2) Current traffic and accident data with respect to the routes under consideration.

(3) The quality of the roads comprising the routes under consideration.

(4) Emergency response capabilities along the routes under consideration.

(5) The proximity of the routes under consideration to places or venues (including sports stadiums, convention centers, concert halls and theaters, and other venues) where large numbers of people gather.

(d) RECOMMENDATIONS.—In conducting the study under subsection (a), the National Academy of Sciences shall also make such recommendations regarding the matters studied as the National Academy of Sciences considers appropriate.

(e) DEADLINE FOR DISPERSAL OF FUNDS FOR STUDY.—The Secretary shall disperse to the National Academy of Sciences the funds for the cost of the study required by subsection (a) not later than 30 days after the date of the enactment of this Act.

(f) REPORT ON RESULTS OF STUDY.—Not later than 6 months after the date of the dispersal of funds under subsection (e), the National Academy of Sciences shall submit to the appropriate committees of Congress a report on the study conducted under subsection (a), including the recommendations required by subsection (d).

(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committees on Commerce, Science, and Transportation, Energy and Natural Resources, and Environment and Public Works of the Senate; and

(2) the Committee on Energy and Commerce of the House of Representatives.

SEC. 1708. REPORT ON ENERGY SAVINGS AND WATER USE.

(a) REPORT.—The Secretary of Energy shall conduct a study of opportunities to reduce energy use by cost-effective improvements in the efficiency of municipal water and wastewater treatment and use, including water pumps, motors, and delivery systems; purification, conveyance and distribution; upgrading of aging water infrastructure, and improved methods for leakage monitoring, measuring, and reporting; and public education.

(b) SUBMISSION OF REPORT.—The Secretary of Energy shall submit a report on the results of the study, including any recommendations for implementation of measures and estimates of costs and resource savings, no later than 2 years from the date of enactment of this section.

(c) AUTHORIZATION.—There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 1709. REPORT ON RESEARCH ON HYDROGEN PRODUCTION AND USE.

Not later than 120 days after the date of enactment of this Act, the Secretary of Energy shall submit to Congress a report that identifies current or potential research projects at Department of Energy nuclear facilities relating to the production or use of hydrogen in fuel cell development or any other method or process enhancing alternative energy production technologies.

DIVISION G—ENERGY INFRASTRUCTURE SECURITY

TITLE XVIII—CRITICAL ENERGY INFRASTRUCTURE

Subtitle A—Department of Energy Programs

SEC. 1801. DEFINITIONS.

In this title:

(1) CRITICAL ENERGY INFRASTRUCTURE.—

(A) IN GENERAL.—The term ''critical energy infrastructure'' means a physical or cyber-based system or service for—

(i) the generation, transmission or distribution of electric energy; or

(ii) the production, refining, or storage of petroleum, natural gas, or petroleum product—

the incapacity or destruction of which would have a debilitating impact on the defense or economic security of the United States.

(B) EXCLUSION.—The term shall not include a facility that is licensed by the Nuclear Regulatory Commission under section 103 or 104b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133 and 2134(b)).

(2) DEPARTMENT; NATIONAL LABORATORY; SECRETARY.—The terms ''Department'', ''National Laboratory'', and ''Secretary'' have the meaning given such terms in section 1203.

SEC. 1802. ROLE OF THE DEPARTMENT OF ENERGY.

Section 102 of the Department of Energy Organization Act (42 U.S.C. 7112) is amended by adding at the end the following:

''(20) To ensure the safety, reliability, and security of the Nation's energy infrastructure, and to respond to any threat to or disruption of such infrastructure, through activities including—

''(A) research and development;

''(B) financial assistance, technical assistance, and cooperative activities with States, industry, and other interested parties; and

''(C) education and public outreach activities.''.

SEC. 1803. CRITICAL ENERGY INFRASTRUCTURE PROGRAMS.

(a) PROGRAMS.—In addition to the authorities otherwise provided by law (including section 1261), the Secretary is authorized to establish programs of financial, technical, or administrative assistance to—

(1) enhance the security of critical energy infrastructure in the United States;

(2) develop and disseminate, in cooperation with industry, best practices for critical energy infrastructure assurance; and

(3) protect against, mitigate the effect of, and improve the ability to recover from disruptive incidents affecting critical energy infrastructure.

(b) REQUIREMENTS.—A program established under this section shall—

(1) be undertaken in consultation with the advisory committee established under section 1804;

(2) have available to it the scientific and technical resources of the Department, including resources at a National Laboratory; and

(3) be consistent with any overall Federal plan for national infrastructure security developed by the President or his designee.

SEC. 1804. ADVISORY COMMITTEE ON ENERGY INFRASTRUCTURE SECURITY.

(a) ESTABLISHMENT.—The Secretary shall establish an advisory committee, or utilize an existing advisory committee within the Department, to advise the Secretary on policies and programs related to the security of United States energy infrastructure.

(b) BALANCED MEMBERSHIP.—The Secretary shall ensure that the advisory committee established or utilized under subsection (a) has a membership with an appropriate balance among the various interests related to energy infrastructure security, including—

(1) scientific and technical experts;

(2) industrial managers;

(3) worker representatives;

(4) insurance companies or organizations;

(5) environmental organizations;

(6) representatives of State, local, and tribal governments; and

(7) such other interests as the Secretary may deem appropriate.

(c) EXPENSES.—Members of the advisory committee established or utilized under subsection (a) shall serve without compensation, and shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the committee.

SEC. 1805. BEST PRACTICES AND STANDARDS FOR ENERGY INFRASTRUCTURE SECURITY.

The Secretary, in consultation with the advisory committee under section 1804, shall enter into appropriate arrangements with one or more standard-setting organizations, or similar organizations, to assist the development of industry best practices and standards for security related to protecting critical energy infrastructure.

Subtitle B—Department of the Interior Programs

SEC. 1811. OUTER CONTINENTAL SHELF ENERGY INFRASTRUCTURE SECURITY.

(a) DEFINITIONS.—In this section:

(1) APPROVED STATE PLAN.—The term ''approved State plan'' means a State plan approved by the Secretary under subsection (c)(3).

(2) COASTLINE.—The term ''coastline'' has the same meaning as the term ''coast line'' as defined in subsection 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

(3) CRITICAL OCS ENERGY INFRASTRUCTURE FACILITY.—The term ''OCS critical energy infrastructure facility'' means—

(A) a facility located in an OCS Production State or in the waters of such State related to the production of oil or gas on the Outer Continental Shelf; or

(B) a related facility located in an OCS Production State or in the waters of such State that carries out a public service, transportation, or infrastructure activity critical to the operation of an Outer Continental Shelf energy infrastructure facility, as determined by the Secretary.

(4) DISTANCE.—The term ''distance'' means the minimum great circle distance, measured in statute miles.

(5) LEASED TRACT.—

(A) IN GENERAL.—The term ''leased tract'' means a tract that—

(i) is subject to a lease under section 6 or 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1335, 1337) for the purpose of drilling for, developing, and producing oil or natural gas resources; and

(ii) consists of a block, a portion of a block, a combination of blocks or portions of blocks, or a combination of portions of blocks, as—

(I) specified in the lease; and

(II) depicted on an outer Continental Shelf official protraction diagram.

(B) EXCLUSION.—The term ''leased tract'' does not include a tract described in subparagraph (A) that is located in a geographic area subject to a leasing moratorium on January 1, 2001, unless the lease was in production on that date.

(6) OCS POLITICAL SUBDIVISION.—The term ''OCS political subdivision'' means a county, parish, borough or any equivalent subdivision of an OCS Production State all or part of which subdivision lies within the coastal zone (as defined in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)).

(7) OCS PRODUCTION STATE.—The term ''OCS Production State'' means the State of—

(A) Alaska;

(B) Alabama;

(C) California;

(D) Florida;

(E) Louisiana;

(F) Mississippi; or

(G) Texas.

(8) PRODUCTION.—The term ''production'' has the meaning given the term in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(9) PROGRAM.—The term ''program'' means the Outer Continental Shelf Energy Infrastructure Security Program established under subsection (b).

(10) QUALIFIED OUTER CONTINENTAL SHELF REVENUES.—The term ''qualified Outer Continental Shelf revenues'' means all amounts received by the United States from each leased tract or portion of a leased tract lying seaward of the zone defined and governed by section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), or lying within such zone but to which section 8(g) does not apply, the geographic center of which lies within a distance of 200 miles from any part of the coastline of any State, including bonus bids, rents, royalties (including payments for royalties taken in kind and sold), net profit share payments, and related late payment interest. Such term does not include any revenues from a leased tract or portion of a leased tract that is included within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2001, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2001.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(12) STATE PLAN.—The term ''State plan'' means a State plan described in subsection (b).

(b) ESTABLISHMENT.—The Secretary shall establish a program, to be known as the ''Outer Continental Shelf Energy Infrastructure Security Program'', under which the Secretary shall provide funds to OCS Production States to implement approved State plans to provide security against hostile and natural threats to critical OCS energy infrastructure facilities and support of any necessary public service or transportation activities that are needed to maintain the safety and operation of critical energy infrastructure activities. For purposes of this program, restoration of any coastal wetland shall be considered to be an activity that secures critical OCS energy infrastructure facilities from a natural threat.

(c) STATE PLANS.—

(1) INITIAL PLAN.—Not later than 180 days after the date of enactment of this Act, to be eligible to receive funds under the program, the Governor of an OCS Production State shall submit to the Secretary a plan to provide security against hostile and natural threats to critical energy infrastructure facilities in the OCS Production State and to support any of the necessary public service or transportation activities that are needed to maintain the safety and operation of critical energy infrastructure facilities. Such plan shall include—

(A) the name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of this section;

(B) a program for the implementation of the plan which describes how the amounts provided under this section will be used;

(C) a contact for each OCS political subdivision and description of how such political subdivisions will use amounts provided under this section, including a certification by the Governor that such uses are consistent with the requirements of this section; and

(D) measures for taking into account other relevant Federal resources and programs.

(2) ANNUAL REVIEWS.—Not later than 1 year after the date of submission of the plan and annually thereafter, the Governor of an OCS Production State shall—

(A) review the approved State plan; and

(B) submit to the Secretary any revised State plan resulting from the review.

(3) APPROVAL OF PLANS.—

(A) IN GENERAL.—In consultation with appropriate Federal security officials and the Secretaries of Commerce and Energy, the Secretary shall—

(i) approve each State plan; or

(ii) recommend changes to the State plan.

(B) RESUBMISSION OF STATE PLANS.—If the Secretary recommends changes to a State plan under subparagraph (A)(ii), the Governor of the OCS Production State may resubmit a revised State plan to the Secretary for approval.

(4) AVAILABILITY OF PLANS.—The Secretary shall provide to Congress a copy of each approved State plan.

(5) CONSULTATION AND PUBLIC COMMENT.—

(A) CONSULTATION.—The Governor of an OCS Production State shall develop the State plan in consultation with Federal, State, and local law enforcement and public safety officials, industry, Indian tribes, the scientific community, and other persons as appropriate.

(B) PUBLIC COMMENT.—The Governor of an OCS Production State may solicit public comments on the State plan to the extent that the Governor determines to be appropriate.

(d) ALLOCATION OF AMOUNTS BY THE SECRETARY.—The Secretary shall allocate the amounts made available for the purposes of carrying out the program provided for by this section among OCS Production States as follows:

(1) twenty-five percent of the amounts shall be divided equally among OCS Production States.

(2) seventy-five percent of the amounts shall be divided among OCS Production States on the basis of the proximity of each OCS Production State to offshore locations at which oil and gas are being produced.

(e) CALCULATION.—The amount for each OCS Production State under paragraph (d)(2) shall be calculated based on the ratio of qualified OCS revenues generated off the coastline of the OCS Production State to the qualified OCS revenues generated off the coastlines of all OCS Production States for the prior 5-year period. Where there is more than one OCS Production State within 200 miles of a leased tract, the amount of each OCS Production State's payment under paragraph (d)(2) for such leased tract shall be inversely proportional to the distance between the nearest point on the coastline of such State and the geographic center of each leased tract or portion of the leased tract (to the nearest whole mile) that is within 200 miles of that coastline, as determined by the Secretary. A leased tract or portion of a leased tract shall be excluded if the tract or portion is located in a geographic area where a moratorium on new leasing was in effect on January 1, 2001, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2001.

(f) PAYMENTS TO OCS POLITICAL SUBDIVISIONS.—Thirty-five percent of each OCS Production State's allocable share as determined under subsection (e) shall be paid directly to the OCS political subdivisions by the Secretary based on the following formula:

(1) twenty-five percent shall be allocated based on the ratio of such OCS political subdivision's population to the population of all OCS political subdivisions in the OCS Production State.

(2) twenty-five percent shall be allocated based on the ratio of such OCS political subdivision's coastline miles to the coastline miles of all OCS political subdivisions in the OCS Production State. For purposes of this subsection, those OCS political subdivisions without coastlines shall be considered to have a coastline that is the average length of the coastlines of all political subdivisions in the State.

(3) fifty percent shall be allocated based on the relative distance of such OCS political subdivision from any leased tract used to calculate that OCS Production State's allocation using ratios that are inversely proportional to the distance between the point in the coastal political subdivision closest to the geographic center of each leased tract or portion, as determined by the Secretary. For purposes of the calculations under this subparagraph, a leased tract or portion of a leased tract shall be excluded if the leased tract or portion is located in a geographic area where a moratorium on new leasing was in effect on January 1, 2001, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2001.

(g) FAILURE TO HAVE PLAN APPROVED.—Any amount allocated to an OCS Production State or OCS political subdivision but not disbursed because of a failure to have an approved Plan under this section shall be allocated equally by the Secretary among all other OCS Production States in a manner consistent with this subsection except that the Secretary shall hold in escrow such amount until the final resolution of any appeal regarding the disapproval of a plan submitted under this section. The Secretary may waive the provisions of this paragraph and hold an OCS Production State's allocable share in escrow if the Secretary determines that such State is making a good faith effort to develop and submit, or update, a Plan.

(h) USE OF AMOUNTS ALLOCATED BY THE SECRETARY.—

(1) IN GENERAL.—Amounts allocated by the Secretary under subsection (d) may be used only in accordance with a plan approved pursuant to subsection (c) for—

(A) activities to secure critical OCS energy infrastructure facilities from human or natural threats; and

(B) support of any necessary public service or transportation activities that are needed to maintain the safety and operation of critical OCS energy infrastructure facilities.

(2) RESTORATION OF COASTAL WETLAND.—For the purpose of subparagraph (1)(A), restoration of any coastal wetland shall be considered to be an activity that secures critical OCS energy infrastructure facilities from a natural threat.

(i) FAILURE TO HAVE USE.—Any amount allocated to an OCS political subdivision but not disbursed because of a failure to have a qualifying use as described in subsection (h) shall be allocated by the Secretary to the OCS Production State in which the OCS political subdivision is located except that the Secretary shall hold in escrow such amount until the final resolution of any appeal regarding the use of the funds.

(j) COMPLIANCE WITH AUTHORIZED USES.—If the Secretary determines that any expenditure made by an OCS Production State or an OCS political subdivision is not consistent with the uses authorized in subsection (h), the Secretary shall not disburse any further amounts under this section to that OCS Production State or OCS political subdivision until the amounts used for the inconsistent expenditure have been repaid or obligated for authorized uses.

(k) RULEMAKING.—The Secretary may promulgate such rules and regulations as may be necessary to carry out the purposes of this section, including rules and regulations setting forth an appropriate process for appeals.

(l) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated $450,000,000 for each of the fiscal years 2003 through 2008 to carry out the purposes of this section.

DIVISION H—ENERGY TAX INCENTIVES

SEC. 1900. SHORT TITLE; ETC.

(a) SHORT TITLE.—This division may be cited as the ''Energy Tax Incentives Act of 2003''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE XIX—EXTENSION AND MODIFICATION OF RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT

SEC. 1901. THREE-YEAR EXTENSION OF CREDIT FOR PRODUCING ELECTRICITY FROM WIND AND POULTRY WASTE.

(a) IN GENERAL.—Subparagraphs (A) and (C) of section 45(c)(3) (relating to qualified facility), as amended by section 603(a) of the Job Creation and Worker Assistance Act of 2002, are each amended by striking ''January 1, 2004'' and inserting ''January 1, 2007''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1902. CREDIT FOR ELECTRICITY PRODUCED FROM BIOMASS.

(a) EXTENSION AND MODIFICATION OF PLACED-IN-SERVICE RULES.—Paragraph (3) of section 45(c) is amended—

(1) by striking subparagraph (B) and inserting the following new subparagraph:

''(B) CLOSED-LOOP BIOMASS FACILITY.—

''(i) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term 'qualified facility' means any facility—

''(I) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2007, or

''(II) owned by the taxpayer which is originally placed in service before January 1, 1993, and modified to use closed-loop biomass to cofire with coal before January 1, 2007, as approved under the Biomass Power for Rural Development Programs or under a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

''(ii) SPECIAL RULES.—In the case of a qualified facility described in clause (i)(II)—

''(I) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this subclause, and

''(II) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) is the lessee or the operator of such facility.'', and

(2) by adding at the end the following new subparagraph:

''(D) BIOMASS FACILITY.—

''(i) IN GENERAL.—In the case of a facility using biomass (other than closed-loop biomass) to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service before January 1, 2005.

''(ii) SPECIAL RULE FOR POSTEFFECTIVE DATE FACILITIES.—In the case of any facility described in clause (i) which is placed in service after the date of the enactment of this clause, the 3-year period beginning on the date the facility is originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(iii) SPECIAL RULES FOR PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in clause (i) which is placed in service before the date of the enactment of this clause—

''(I) subsection (a)(1) shall be applied by substituting '1.0 cents' for '1.5 cents', and

''(II) the 3-year period beginning after December 31, 2002, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(iv) CREDIT ELIGIBILITY.—In the case of any facility described in clause (i), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) is the lessee or the operator of such facility.''.

(b) DEFINITION OF BIOMASS.—

(1) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources) is amended—

(A) by striking ''and'' at the end of subparagraph (B),

(B) by striking the period at the end of subparagraph (C) and inserting '', and'', and

(C) by adding at the end the following new subparagraph:

''(D) biomass (other than closed-loop biomass).''.

(2) BIOMASS DEFINED.—Section 45(c) (relating to definitions) is amended by adding at the end the following new paragraph:

''(5) BIOMASS.—The term 'biomass' means any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

''(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, but not including old-growth timber (other than old-growth timber which has

been permitted or contracted for removal by any appropriate Federal authority through the National Environmental Policy Act or by any appropriate State authority),

''(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled, or

''(C) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.''.

(c) COORDINATION WITH SECTION 29.—Section 45(c) (relating to definitions) is amended by adding at the end the following new paragraph:

''(6) COORDINATION WITH SECTION 29.—The term 'qualified facility' shall not include any facility the production from which is taken into account in determining any credit under section 29 for the taxable year or any prior taxable year.''.

(d) CLERICAL AMENDMENTS.—

(1) The heading for subsection (c) of section 45 is amended by inserting ''AND SPECIAL RULES'' after ''DEFINITIONS''.

(2) The heading for subsection (d) of section 45 is amended by inserting ''ADDITIONAL'' before ''DEFINITIONS''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to electricity sold after the date of the enactment of this Act.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(c)(3)(D)(i) of the Internal Revenue Code of 1986, as added by this section, which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity sold after December 31, 2002.

SEC. 1903. CREDIT FOR ELECTRICITY PRODUCED FROM SWINE AND BOVINE WASTE NUTRIENTS, GEOTHERMAL ENERGY, AND SOLAR ENERGY.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—

(1) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by this Act, is amended by striking ''and'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting a comma, and by adding at the end the following new subparagraphs:

''(E) swine and bovine waste nutrients,

''(F) geothermal energy, and

''(G) solar energy.''.

(2) DEFINITIONS.—Section 45(c) (relating to definitions and special rules), as amended by this Act, is amended by redesignating paragraph (6) as paragraph (8) and by inserting after paragraph (5) the following new paragraphs:

''(6) SWINE AND BOVINE WASTE NUTRIENTS.—The term 'swine and bovine waste nutrients' means swine and bovine manure and litter, including bedding material for the disposition of manure.

''(7) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).''.

(b) EXTENSION AND MODIFICATION OF PLACED-IN-SERVICE RULES.—Section 45(c)(3) (relating to qualified facility), as amended by this Act, is amended by adding at the end the following new subparagraphs:

''(E) SWINE AND BOVINE WASTE NUTRIENTS FACILITY.—In the case of a facility using swine and bovine waste nutrients to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this subparagraph and before January 1, 2007.

''(F) GEOTHERMAL OR SOLAR ENERGY FACILITY.—

''(i) IN GENERAL.—In the case of a facility using geothermal or solar energy to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this clause and before January 1, 2007.

''(ii) SPECIAL RULE.—In the case of any facility described in clause (i), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1904. TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.

(a) IN GENERAL.—Section 45(d) (relating to additional definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(A) ALLOWANCE OF CREDIT.—

''(i) IN GENERAL.—Except as otherwise provided in this subsection—

''(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

''(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

''(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(II) an organization described in section 1381(a)(2)(C),

''(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

''(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

''(B) TRANSFER OF CREDIT.—

''(i) IN GENERAL.—A person described in subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

''(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is claimed once and not reassigned by such other person.

''(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

''(C) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in subclause (I), (II), or (V) of subparagraph (A)(ii), any credit to which subparagraph (A)(i) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003.

''(D) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

''(E) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.''.

(b) CREDITS NOT REDUCED BY TAX-EXEMPT BONDS OR CERTAIN OTHER SUBSIDIES.—Section 45(b)(3) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting ''(other than any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003)'' after ''project'' in clause (ii) (as so redesignated),

(4) by adding at the end the following new sentence: ''This paragraph shall not apply with respect to any facility described in subsection (c)(3)(B)(i)(II).'', and

(5) by striking ''TAX-EXEMPT BONDS,'' in the heading and inserting ''CERTAIN''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1905. CREDIT FOR ELECTRICITY PRODUCED FROM SMALL IRRIGATION POWER.

(a) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by this Act, is amended by striking ''and'' at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting '', and'', and by adding at the end the following new subparagraph:

''(H) small irrigation power.''.

(b) QUALIFIED FACILITY.—Section 45(c)(3) (relating to qualified facility), as amended by this Act, is amended by adding at the end the following new subparagraph:

''(G) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after date of the enactment of this subparagraph and before January 1, 2007.''.

(c) DEFINITION.—Section 45(c), as amended by this Act, is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) SMALL IRRIGATION POWER.—The term 'small irrigation power' means power—

''(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

''(B) the installed capacity of which is less than 5 megawatts.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1906. CREDIT FOR ELECTRICITY PRODUCED FROM MUNICIPAL BIOSOLIDS AND RECYCLED SLUDGE.

(a) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by this Act, is amended by striking ''and'' at the end of subparagraph (F), by striking the period at the end of subparagraph (G), and by adding at the end the following new subparagraphs:

''(H) municipal biosolids, and

''(I) recycled sludge.''.

(b) QUALIFIED FACILITIES.—Section 45(c)(3) (relating to qualified facility), as amended by this Act, is amended by adding at the end the following new subparagraphs:

''(G) MUNICIPAL BIOSOLIDS FACILITY.—In the case of a facility using municipal biosolids to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2001, and before January 1, 2007.

''(H) RECYCLED SLUDGE FACILITY.—

''(i) IN GENERAL.—In the case of a facility using recycled sludge to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

''(ii) SPECIAL RULE.—In the case of a qualified facility described in clause (i), the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this subparagraph.''.

(c) DEFINITIONS.—Section 45(c), as amended by this Act, is amended by redesignating paragraph (8) as paragraph (10) and by inserting after paragraph (7) the following new paragraphs:

''(8) MUNICIPAL BIOSOLIDS.—The term 'municipal biosolids' means the residue or solids removed by a municipal wastewater treatment facility.

''(9) RECYCLED SLUDGE.—

''(A) IN GENERAL.—The term 'recycled sludge' means the recycled residue byproduct created in the treatment of commercial, industrial, municipal, or navigational wastewater.

''(B) RECYCLED.—The term 'recycled' means the processing of residue into a marketable product, but does not include incineration for the purpose of volume reduction.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

TITLE XX—ALTERNATIVE MOTOR VEHICLES AND FUELS INCENTIVES

SEC. 2001. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

''(2) the new qualified hybrid motor vehicle credit determined under subsection (c), and

''(3) the new qualified alternative fuel motor vehicle credit determined under subsection (d).

''(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

''(A) $4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(2) INCREASE FOR FUEL EFFICIENCY.—

''(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

''(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

''(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

''(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

''(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy,

''(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2000 model year city fuel economy,

''(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2000 model year city fuel economy, and

''(vii) $4,000, if such vehicle achieves at least 300 percent of the 2000 model year city fuel economy.

''(B) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2000 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

''If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 to 8,500 lbs	11.1 mpg.

''(ii) In the case of a light truck:

''If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.0 mpg.

''(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term 'vehicle inertia weight class' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term 'new qualified fuel cell motor vehicle' means a motor vehicle—

''(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

''(B) which, in the case of a passenger automobile or light truck—

''(i) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(C) the original use of which commences with the taxpayer,

''(D) which is acquired for use or lease by the taxpayer and not for resale, and

''(E) which is made by a manufacturer.

''(c) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

''(2) CREDIT AMOUNT.—

''(A) IN GENERAL.—The credit amount determined under this paragraph shall be determined in accordance with the following tables:

''(i) In the case of a new qualified hybrid motor vehicle which is a passenger automobile or light truck and which provides the following percentage of the maximum available power:

''If percentage of the maximum available power is:	The credit amount is:
At least 5 percent but less than 10 percent	$250
At least 10 percent but less than 20 percent	$500
At least 20 percent but less than 30 percent	$750
At least 30 percent	$1,000.

''(ii) In the case of a new qualified hybrid motor vehicle which is a heavy duty hybrid motor vehicle and which provides the following percentage of the maximum available power:

''(I) If such vehicle has a gross vehicle weight rating of not more than 14,000 pounds:

''If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	$1,000
At least 30 percent but less than 40 percent	$1,750
At least 40 percent but less than 50 percent	$2,000
At least 50 percent but less than 60 percent	$2,250
At least 60 percent	$2,500.

''(II) If such vehicle has a gross vehicle weight rating of more than 14,000 but not more than 26,000 pounds:

''If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	$4,000
At least 30 percent but less than 40 percent	$4,500
At least 40 percent but less than 50 percent	$5,000
At least 50 percent but less than 60 percent	$5,500
At least 60 percent	$6,000.

''(III) If such vehicle has a gross vehicle weight rating of more than 26,000 pounds:

''If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	$6,000
At least 30 percent but less than 40 percent	$7,000
At least 40 percent but less than 50 percent	$8,000
At least 50 percent but less than 60 percent	$9,000
At least 60 percent	$10,000.

''(B) INCREASE FOR FUEL EFFICIENCY.—

''(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a new qualified hybrid motor vehicle which is a passenger automobile or light truck shall be increased by—

''(I) $500, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

''(II) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

''(III) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

''(IV) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

''(V) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy, and

''(VI) $3,000, if such vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

''(ii) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of clause (i), the 2000 model year city fuel economy with respect to a vehicle shall be determined using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

''(C) INCREASE FOR ACCELERATED EMISSIONS PERFORMANCE.—The amount determined under subparagraph (A)(ii) with respect to an applicable heavy duty hybrid motor vehicle shall be increased by the increased credit amount determined in accordance with the following tables:

''(i) In the case of a vehicle which has a gross vehicle weight rating of not more than 14,000 pounds:

''If the model year is:	The increased credit amount is:
2002	$3,500
2003	$3,000
2004	$2,500
2005	$2,000
2006	$1,500.

''(ii) In the case of a vehicle which has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds:

''If the model year is:	The increased credit amount is:
2002	$9,000
2003	$7,750
2004	$6,500
2005	$5,250
2006	$4,000.

''(iii) In the case of a vehicle which has a gross vehicle weight rating of more than 26,000 pounds:

''If the model year is:	The increased credit amount is:
2002	$14,000
2003	$12,000
2004	$10,000
2005	$8,000
2006	$6,000.

''(D) DEFINITIONS.—

''(i) APPLICABLE HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (C), the term 'applicable heavy duty hybrid motor vehicle' means a heavy duty hybrid motor vehicle which is powered by an internal combustion or heat engine which is certified as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2007 and later model year diesel heavy duty engines, or for 2008 and later model year ottocycle heavy duty engines, as applicable.

''(ii) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of this paragraph, the term 'heavy duty hybrid motor vehicle' means a new qualified hybrid motor vehicle which has a gross vehicle weight rating of more than 10,000 pounds and draws propulsion energy from both of the following onboard sources of stored energy:

''(I) An internal combustion or heat engine using consumable fuel which, for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds a level of not greater than 3.0 grams per brake horsepower–hour of oxides of nitrogen and 0.01 per brake horsepower–hour of particulate matter.

''(II) A rechargeable energy storage system.

''(iii) MAXIMUM AVAILABLE POWER.—

''(I) PASSENGER AUTOMOBILE OR LIGHT TRUCK.—For purposes of subparagraph (A)(i), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

''(II) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (A)(ii), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. The term 'total traction power' means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

''(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection, the term 'new qualified hybrid motor vehicle' means a motor vehicle—

''(A) which draws propulsion energy from onboard sources of stored energy which are both—

''(i) an internal combustion or heat engine using combustible fuel, and

''(ii) a rechargeable energy storage system,

''(B) which, in the case of a passenger automobile or light truck—

''(i) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(C) the original use of which commences with the taxpayer,

''(D) which is acquired for use or lease by the taxpayer and not for resale, and

''(E) which is made by a manufacturer.

''(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

''(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

''(A) 40 percent, plus

''(B) 30 percent, if such vehicle—

''(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

''(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

''(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

''(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(4) QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE DEFINED.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified alternative fuel motor vehicle' means any motor vehicle—

''(i) which is only capable of operating on an alternative fuel,

''(ii) the original use of which commences with the taxpayer,

''(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

''(iv) which is made by a manufacturer.

''(B) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

''(5) CREDIT FOR MIXED-FUEL VEHICLES.—

''(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

''(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

''(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

''(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term 'mixed-fuel vehicle' means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

''(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

''(ii) either—

''(I) has received a certificate of conformity under the Clean Air Act, or

''(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105-94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

''(iii) the original use of which commences with the taxpayer,

''(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

''(v) which is made by a manufacturer.

''(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '75/25 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

''(D) 90/10 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '90/10 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(2) the tentative minimum tax for the taxable year.

''(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) CONSUMABLE FUEL.—The term 'consumable fuel' means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

''(2) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

''(3) CITY FUEL ECONOMY.—The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

''(4) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(5) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (e)).

''(6) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter—

''(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (d) shall be reduced by the amount of such credit attributable to such cost, and

''(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

''(7) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(8) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

''(9) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

''(10) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

''(11) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be allowed as a credit carryback for each of the 3 taxable years beginning after September 30, 2002, which precede the unused credit year and a credit carryforward for each of the 20 taxable years which succeed the unused credit year.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(12) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

''(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

''(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

''(g) REGULATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

''(2) COORDINATION IN PRESCRIPTION OF CERTAIN REGULATIONS.—The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

''(h) TERMINATION.—This section shall not apply to any property purchased after—

''(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2011, and

''(2) in the case of any other property, December 31, 2006.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 30B(f)(5).''.

(2) Section 55(c)(2) is amended by inserting ''30B(e),'' after ''30(b)(3)''.

(3) Section 6501(m) is amended by inserting ''30B(f)(10),'' after ''30(d)(4),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

''Sec. 30B. Alternative motor vehicle credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

SEC. 2002. MODIFICATION OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) AMOUNT OF CREDIT.—

(1) IN GENERAL.—Section 30(a) (relating to allowance of credit) is amended by striking ''10 percent of''.

(2) LIMITATION OF CREDIT ACCORDING TO TYPE OF VEHICLE.—Section 30(b) (relating to limitations) is amended—

(A) by striking paragraphs (1) and (2) and inserting the following new paragraph:

''(1) LIMITATION ACCORDING TO TYPE OF VEHICLE.—The amount of the credit allowed under subsection (a) for any vehicle shall not exceed the greatest of the following amounts applicable to such vehicle:

''(A) In the case of a vehicle which conforms to the Motor Vehicle Safety Standard 500 prescribed by the Secretary of Transportation, as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003, the lesser of—

''(i) 10 percent of the manufacturer's suggested retail price of the vehicle, or

''(ii) $1,500.

''(B) In the case of a vehicle not described in subparagraph (A) with a gross vehicle weight rating not exceeding 8,500 pounds—

''(i) $3,500, or

''(ii) $6,000, if such vehicle is—

''(I) capable of a driving range of at least 100 miles on a single charge of the vehicle's rechargeable batteries as measured pursuant to the urban dynamometer schedules under appendix I to part 86 of title 40, Code of Federal Regulations, or

''(II) capable of a payload capacity of at least 1,000 pounds.

''(C) In the case of a vehicle with a gross vehicle weight rating exceeding 8,500 but not exceeding 14,000 pounds, $10,000.

''(D) In the case of a vehicle with a gross vehicle weight rating exceeding 14,000 but not exceeding 26,000 pounds, $20,000.

''(E) In the case of a vehicle with a gross vehicle weight rating exceeding 26,000 pounds, $40,000.'', and

(B) by redesignating paragraph (3) as paragraph (2).

(3) CONFORMING AMENDMENTS.—

(A) Section 53(d)(1)(B)(iii) is amended by striking ''section 30(b)(3)(B)'' and inserting ''section 30(b)(2)(B)''.

(3) Section 55(c)(2), as amended by this Act, is amended by striking ''30(b)(3)'' and inserting ''30(b)(2)''.

(b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

(1) IN GENERAL.—Section 30(c)(1)(A) (defining qualified electric vehicle) is amended to read as follows:

''(A) which is—

''(i) operated solely by use of a battery or battery pack, or

''(ii) powered primarily through the use of an electric battery or battery pack using a flywheel or capacitor which stores energy produced by an electric motor through regenerative braking to assist in vehicle operation,''.

(2) LEASED VEHICLES.—Section 30(c)(1)(C) is amended by inserting ''or lease'' after ''use''.

(3) CONFORMING AMENDMENTS.—

(A) Subsections (a), (b)(2), and (c) of section 30 are each amended by inserting ''battery'' after ''qualified'' each place it appears.

(B) The heading of subsection (c) of section 30 is amended by inserting ''BATTERY'' after ''QUALIFIED''.

(C) The heading of section 30 is amended by inserting ''***BATTERY***'' after ''***QUALIFIED***''.

(D) The item relating to section 30 in the table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting ''battery'' after ''qualified''.

(E) Section 179A(c)(3) is amended by inserting ''battery'' before ''electric''.

(F) The heading of paragraph (3) of section 179A(c) is amended by inserting ''BATTERY'' before ''ELECTRIC''.

(c) ADDITIONAL SPECIAL RULES.—Section 30(d) (relating to special rules) is amended by adding at the end the following new paragraphs:

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (b)(2) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be allowed as a credit carryback for each of the 3 taxable years beginning after September 30, 2002, which precede the unused credit year and a credit carryforward for each of the 20 taxable years which succeed the unused credit year.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

SEC. 2003. CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 30C. CLEAN-FUEL VEHICLE REFUELING PROPERTY CREDIT.

''(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the amount paid or incurred by the taxpayer during the taxable year for the installation of qualified clean-fuel vehicle refueling property.

''(b) LIMITATION.—The credit allowed under subsection (a)—

''(1) with respect to any retail clean-fuel vehicle refueling property, shall not exceed $30,000, and

''(2) with respect to any residential clean-fuel vehicle refueling property, shall not exceed $1,000.

''(c) YEAR CREDIT ALLOWED.—The credit allowed under subsection (a) shall be allowed in the taxable year in which the qualified clean-fuel vehicle refueling property is placed in service by the taxpayer.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'qualified clean-fuel vehicle refueling property' has the same meaning given such term by section 179A(d).

''(2) RESIDENTIAL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'residential clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer.

''(3) RETAIL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'retail clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property (other than property described in paragraph (2)) used in a trade or business of the taxpayer.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, 30, and 30B, over

''(2) the tentative minimum tax for the taxable year.

''(f) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(g) NO DOUBLE BENEFIT.—No deduction shall be allowed under section 179A with respect to any property with respect to which a credit is allowed under subsection (a).

''(h) REFUELING PROPERTY INSTALLED FOR TAX-EXEMPT ENTITIES.—In the case of qualified clean-fuel vehicle refueling property installed on property owned or used by an entity exempt from tax under this chapter, the person which installs such refueling property for the entity shall be treated as the taxpayer with respect to the refueling property for purposes of this section (and such refueling property shall be treated as retail clean-fuel vehicle refueling property) and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any installation contract the specific amount of the credit allowable under this section.

''(i) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year (referred to as the 'unused credit year' in this subsection), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).

''(j) SPECIAL RULES.—Rules similar to the rules of paragraphs (4) and (5) of section 179A(e) shall apply.

''(k) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(l) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2006.''.

(b) INCENTIVE FOR PRODUCTION OF HYDROGEN AT QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—Section 179A(d) (defining qualified clean-fuel vehicle refueling property) is amended by adding at the end the following new flush sentence:

''In the case of clean-burning fuel which is hydrogen produced from another clean-burning fuel, paragraph (3)(A) shall be applied by substituting 'production, storage, or dispensing' for 'storage or dispensing' both places it appears.''.

(c) CONFORMING AMENDMENTS.—(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting '', and'', and by adding at the end the following new paragraph:

''(30) to the extent provided in section 30C(f).''.

(2) Section 55(c)(2), as amended by this Act, is amended by inserting ''30C(e),'' after ''30B(e)''.

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30B the following new item:

''Sec. 30C. Clean-fuel vehicle refueling property credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

SEC. 2004. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

''SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the alternative fuel retail sales credit for any taxable year is the applicable amount for each gasoline gallon equivalent of alternative fuel sold at retail by the taxpayer during such year as a fuel to propel any qualified motor vehicle.

''(b) DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE AMOUNT.—The term 'applicable amount' means the amount determined in accordance with the following table:

''In the case of any taxable year ending in—	***The applicable amount is—***
2002 and 2003	*30 cents*
2004	*40 cents*
2005 and 2006	*50 cents.*

''(2) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol or ethanol.

''(3) GASOLINE GALLON EQUIVALENT.—The term 'gasoline gallon equivalent' means, with respect to any alternative fuel, the amount (determined by the Secretary) of such fuel having a Btu content of 114,000.

''(4) QUALIFIED MOTOR VEHICLE.—The term 'qualified motor vehicle' means any motor vehicle (as defined in section 30(c)(2)) which meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled.

''(5) SOLD AT RETAIL.—

''(A) IN GENERAL.—The term 'sold at retail' means the sale, for a purpose other than resale, after manufacture, production, or importation.

''(B) USE TREATED AS SALE.—If any person uses alternative fuel (including any use after importation) as a fuel to propel any qualified alternative fuel motor vehicle (as defined in section 30B(d)(4)) before such fuel is sold at retail, then such use shall be treated in the same manner as if such fuel were sold at retail as a fuel to propel such a vehicle by such person.

''(c) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any fuel taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such fuel.

''(d) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold at retail after December 31, 2006.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the alternative fuel retail sales credit determined under section 40A(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules) is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF SECTION 40A CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the alternative fuel retail sales credit determined under section 40A(a) may be carried back to a taxable year ending before January 1, 2002.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 40 the following new item:

''Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold at retail after September 30, 2002, in taxable years ending after such date.

SEC. 2005. SMALL ETHANOL PRODUCER CREDIT.

(a) ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.—Section 40(g) (relating to alcohol used as fuel) is amended by adding at the end the following new paragraph:

''(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

''(A) ELECTION TO ALLOCATE.—

''(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

''(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons under subparagraph (A)—

''(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year,

''(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron for which the patronage dividends for the taxable year described in subparagraph (A) are included in gross income, and

''(iii) shall be included in gross income of such patrons for the taxable year in the manner and to the extent provided in section 87.

''(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a)(3) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(i) such reduction, over

''(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.''.

(b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER CREDIT.—

(1) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking ''30,000,000'' each place it appears and inserting ''60,000,000''.

(2) SMALL ETHANOL PRODUCER CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) is amended by striking ''subpart D'' and inserting ''subpart D, other than section 40(a)(3),''.

(3) ALLOWING CREDIT AGAINST ENTIRE REGULAR TAX AND MINIMUM TAX.—

(A) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax), as amended by section 301(b) of the Job Creation and Worker Assistance Act of 2002, is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) SPECIAL RULES FOR SMALL ETHANOL PRODUCER CREDIT.—

''(A) IN GENERAL.—In the case of the small ethanol producer credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the small ethanol producer credit).

''(B) SMALL ETHANOL PRODUCER CREDIT.—For purposes of this subsection, the term 'small ethanol producer credit' means the credit allowable under subsection (a) by reason of section 40(a)(3).''.

(B) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii), as amended by section 301(b)(2) of the Job Creation and Worker Assistance Act of 2002, and subclause (II) of section 38(c)(3)(A)(ii), as added by section 301(b)(1) of such Act, are each amended by inserting ''or the small ethanol producer credit'' after ''employee credit''.

(4) SMALL ETHANOL PRODUCER CREDIT NOT ADDED BACK TO INCOME UNDER SECTION 87.—Section 87 (relating to income inclusion of alcohol fuel credit) is amended to read as follows:

''SEC. 87. ALCOHOL FUEL CREDIT.

''Gross income includes an amount equal to the sum of—

''(1) the amount of the alcohol mixture credit determined with respect to the taxpayer for the taxable year under section 40(a)(1), and

''(2) the alcohol credit determined with respect to the taxpayer for the taxable year under section 40(a)(2).''.

(c) CONFORMING AMENDMENT.—Section 1388 (relating to definitions and special rules for cooperative organizations) is amended by adding at the end the following new subsection:

''(k) CROSS REFERENCE.—For provisions relating to the apportionment of the alcohol fuels credit between cooperative organizations and their patrons, see section 40(g)(6).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 2006. ALL ALCOHOL FUELS TAXES TRANSFERRED TO HIGHWAY TRUST FUND.

(a) IN GENERAL.—Section 9503(b)(4) (relating to certain taxes not transferred to Highway Trust Fund) is amended—

(1) by adding ''or'' at the end of subparagraph (C),

(2) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(3) by striking subparagraphs (E) and (F).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes imposed after September 30, 2003.

SEC. 2007. INCREASED FLEXIBILITY IN ALCOHOL FUELS TAX CREDIT.

(a) ALCOHOL FUELS CREDIT MAY BE TRANSFERRED.—Section 40 (relating to alcohol used as fuel) is amended by adding at the end the following new subsection:

''(i) CREDIT MAY BE TRANSFERRED.—

''(1) IN GENERAL.—A taxpayer may transfer any credit allowable under paragraph (1) or (2) of subsection (a) with respect to alcohol used in the production of ethyl tertiary butyl ether through an assignment to a qualified assignee. Such transfer may be revoked only with the consent of the Secretary.

''(2) QUALIFIED ASSIGNEE.—For purposes of this subsection, the term 'qualified assignee' means any person who—

''(A) is liable for taxes imposed under section 4081,

''(B) is required to register under section 4101, and

''(C) obtains a certificate from the taxpayer described in paragraph (1) which identifies the amount of alcohol used in such production.

''(3) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to insure that any credit described in paragraph (1) is claimed once and not reassigned by a qualified assignee.''.

(b) ALCOHOL FUELS CREDIT MAY BE TAKEN AGAINST MOTOR FUELS TAX LIABILITY.—

(1) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32 (relating to special provisions applicable to petroleum products) is amended by adding at the end the following new section:

''SEC. 4104. CREDIT AGAINST MOTOR FUELS TAXES.

''(a) ELECTION TO USE CREDIT AGAINST MOTOR FUELS TAXES.—There is hereby allowed as a credit against the taxes imposed by section 4081, any credit allowed under paragraph (1) or (2) of section 40(a) with respect to alcohol used in the production of ethyl tertiary butyl ether to the extent—

''(1) such credit is not claimed by the taxpayer or the qualified assignee under section 40(i) as a credit under section 40, and

''(2) the taxpayer or qualified assignee elects to claim such credit under this section.

''(b) ELECTION IRREVOCABLE.—Any election under subsection (a) shall be irrevocable.

''(c) REQUIRED STATEMENT.—Any return claiming a credit pursuant to an election under this section shall be accompanied by a statement that the credit was not, and will not, be claimed on an income tax return.

''(d) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to avoid the claiming of double benefits and to prescribe the taxable periods with respect to which the credit may be claimed.''.

(2) CONFORMING AMENDMENT.—Section 40(c) is amended by striking ''or section 4091(c)'' and inserting ''section 4091(c), or section 4104''.

(3) CLERICAL AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new item:

''Sec. 4104. Credit against motor fuels taxes.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on and after the date of the enactment of this Act.

SEC. 2008. INCENTIVES FOR BIODIESEL.

(a) CREDIT FOR BIODIESEL USED AS A FUEL.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by inserting after section 40A the following new section:

''SEC. 40B. BIODIESEL USED AS FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the biodiesel mixture credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is the sum of the products of the biodiesel mixture rate for each qualified biodiesel mixture and the number of gallons of such mixture of the taxpayer for the taxable year.

''(B) BIODIESEL MIXTURE RATE.—For purposes of subparagraph (A), the biodiesel mixture rate for each qualified biodiesel mixture shall be—

''(i) in the case of a mixture with only biodiesel V, 1 cent for each whole percentage point (not exceeding 20 percentage points) of biodiesel V in such mixture, and

''(ii) in the case of a mixture with biodiesel NV, or a combination of biodiesel V and biodiesel NV, 0.5 cent for each whole percentage point (not exceeding 20 percentage points) of such biodiesel in such mixture.

''(2) QUALIFIED BIODIESEL MIXTURE.—

''(A) IN GENERAL.—The term 'qualified biodiesel mixture' means a mixture of diesel and biodiesel V or biodiesel NV which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the taxpayer producing such mixture.

''(B) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—

''(i) IN GENERAL.—Biodiesel V or biodiesel NV used in the production of a qualified biodiesel mixture shall be taken into account—

''(I) only if the sale or use described in subparagraph (A) is in a trade or business of the taxpayer, and

''(II) for the taxable year in which such sale or use occurs.

''(ii) CERTIFICATION FOR BIODIESEL V.—Biodiesel V used in the production of a qualified biodiesel mixture shall be taken into account only if the taxpayer described in subparagraph (A) obtains a certification from the producer of the biodiesel V which identifies the product produced.

''(C) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(c) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel V shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such biodiesel V solely by reason of the application of section 4041(n) or section 4081(f).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BIODIESEL V DEFINED.—The term 'biodiesel V' means the monoalkyl esters of long chain fatty acids derived solely from virgin vegetable oils for use in compressional-ignition (diesel) engines. Such term shall include esters derived from vegetable oils from corn, soybeans,

sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds.

''(2) BIODIESEL NV DEFINED.—The term 'biodiesel nv' means the monoalkyl esters of long chain fatty acids derived from nonvirgin vegetable oils or animal fats for use in compressional-ignition (diesel) engines.

''(3) REGISTRATION REQUIREMENTS.—The terms 'biodiesel V' and 'biodiesel NV' shall only include a biodiesel which meets—

''(i) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

''(ii) the requirements of the American Society of Testing and Materials D6751.

''(2) BIODIESEL MIXTURE NOT USED AS A FUEL, ETC.—

''(A) IMPOSITION OF TAX.—If—

''(i) any credit was determined under this section with respect to biodiesel V or biodiesel NV used in the production of any qualified biodiesel mixture, and

''(ii) any person—

''(I) separates such biodiesel from the mixture, or

''(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the biodiesel mixture rate applicable under subsection (b)(1)(B) and the number of gallons of the mixture.

''(B) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) as if such tax were imposed by section 4081 and not by this chapter.

''(3) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) ELECTION TO HAVE BIODIESEL FUELS CREDIT NOT APPLY.—

''(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

''(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

''(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.''.

''(f) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2005.''.

(2) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following new paragraph:

''(17) the biodiesel fuels credit determined under section 40B(a).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE JANUARY 1, 2003.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year beginning before January 1, 2003.''.

(B) Section 196(c) is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10), and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40B(a).''.

(C) Section 6501(m), as amended by this Act, is amended by inserting ''40B(e),'' after ''40(f),''.

(D) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 40A the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2002.

(b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON BIODIESEL V MIXTURES.—

(1) IN GENERAL.—Section 4081 (relating to manufacturers tax on petroleum products) is amended by adding at the end the following new subsection:

''(f) BIODIESEL V MIXTURES.—Under regulations prescribed by the Secretary—

''(1) IN GENERAL.—In the case of the removal or entry of a qualified biodiesel mixture with biodiesel V, the rate of tax under subsection (a) shall be the otherwise applicable rate reduced by the biodiesel mixture rate (if any) applicable to the mixture.

''(2) TAX PRIOR TO MIXING.—

''(A) IN GENERAL.—In the case of the removal or entry of diesel fuel for use in producing at the time of such removal or entry a qualified biodiesel mixture with biodiesel V, the rate of tax under subsection (a) shall be the rate determined under subparagraph (B).

''(B) DETERMINATION OF RATE.—For purposes of subparagraph (A), the rate determined under this subparagraph is the rate determined under paragraph (1), divided by a percentage equal to 100 percent minus the percentage of biodiesel V which will be in the mixture.

''(3) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (6) and (7) of subsection (c) shall apply for purposes of this subsection.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041 is amended by adding at the end the following new subsection:

''(n) BIODIESEL V MIXTURES.—Under regulations prescribed by the Secretary, in the case of the sale or use of a qualified biodiesel mixture (as defined in section 40B(b)(2)) with biodiesel V, the rates under paragraphs (1) and (2) of subsection (a) shall be the otherwise applicable rates, reduced by any applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)).''.

(B) Section 6427 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) BIODIESEL V MIXTURES.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at a rate not determined under section 4081(f) is used by any person in producing a qualified biodiesel mixture (as defined in section 40B(b)(2)) with biodiesel V which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the per gallon applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)) with respect to such fuel.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any fuel sold after December 31, 2002, and before January 1, 2006.

(c) HIGHWAY TRUST FUND HELD HARMLESS.—There are hereby transferred (from time to time) from the funds of the Commodity Credit Corporation amounts determined by the Secretary of the Treasury to be equivalent to the reductions that would occur (but for this subsection) in the receipts of the Highway Trust Fund by reason of the amendments made by this section.

SEC. 2009. CREDIT FOR TAXPAYERS OWNING COMMERCIAL POWER TAKEOFF VEHICLES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45N. COMMERCIAL POWER TAKEOFF VEHICLES CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the amount of the commercial power takeoff vehicles credit determined under this section for the taxable year is $250 for each qualified commercial power takeoff vehicle owned by the taxpayer as of the close of the calendar year in which or with which the taxable year of the taxpayer ends.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED COMMERCIAL POWER TAKEOFF VEHICLE.—The term 'qualified commercial power takeoff vehicle' means any highway vehicle described in paragraph (2) which is propelled by any fuel subject to tax under section 4041 or 4081 if such vehicle is used in a trade or business or for the production of income (and is licensed and insured for such use).

''(2) HIGHWAY VEHICLE DESCRIBED.—A highway vehicle is described in this paragraph if such vehicle is—

''(A) designed to engage in the daily collection of refuse or recyclables from homes or businesses and is equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a load compactor, or

''(B) designed to deliver ready mixed concrete on a daily basis and is equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a mixer drum to agitate and mix the product en route to the delivery site.

''(c) EXCEPTION FOR VEHICLES USED BY GOVERNMENTS, ETC.—No credit shall be allowed under this section for any vehicle owned by any person at the close of a calendar year if such vehicle is used at any time during such year by—

''(1) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

''(2) an organization exempt from tax under section 501(a).

''(d) DENIAL OF DOUBLE BENEFIT.—The amount of any deduction under this subtitle for any tax imposed by subchapter B of chapter 31 or part III of subchapter A of chapter 32 for any taxable year shall be reduced (but not below zero) by the amount of the credit determined under this subsection for such taxable year.

''(e) TERMINATION.—This section shall not apply with respect to any calendar year after 2004.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting '', plus'', and by adding at the end the following new paragraph:

''(24) the commercial power takeoff vehicles credit under section 45N(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45N. Commercial power takeoff vehicles credit.''.

(d) REGULATIONS.—Not later than January 1, 2005, the Secretary of the Treasury, in consultation with the Secretary of Energy, shall by regulation provide for the method of determining the exemption from any excise tax imposed under section 4041 or 4081 of the Internal Revenue Code of 1986 on fuel used through a mechanism to power equipment attached to a highway vehicle as described in section 45N(b)(2) of such Code, as added by subsection (a).

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 2010. MODIFICATIONS TO THE INCENTIVES FOR ALTERNATIVE VEHICLES AND FUELS.

(a) MODIFICATION TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—The table in section 30B(c)(2)(A) of the Internal Revenue Code of 1986, as added by this Act, is amended by striking ''5 percent'' and inserting ''4 percent''.

(b) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A of the Internal Revenue Code of 1986 is amended to read as follows:

''(f) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) of such Code, as amended by section 606(a) of the Job Creation and Worker Assistance Act of 2002, is amended—

(A) by striking ''calendar year 2004'' in clause (i) and inserting ''calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen) '',

(B) by striking ''2005'' in clause (ii) and inserting ''2006 (calendar year 2010 in the case of property relating to hydrogen)'', and

(C) by striking ''2006'' in clause (iii) and inserting ''2007 (calendar year 2011 in the case of property relating to hydrogen)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

(c) MODIFICATION TO CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.—Subsection (l) of section 30C of the Internal Revenue Code of 1986, as added by this Act, is amended to read as follows:

''(l) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(d) EFFECTIVE DATE.—Except as provided in subsection (b)(3), the amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

TITLE XXI—CONSERVATION AND ENERGY EFFICIENCY PROVISIONS

SEC. 2101. CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOME.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.

''(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualifying new home during construction of such home.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—

''(A) IN GENERAL.—The credit allowed by this section with respect to a qualifying new home shall not exceed—

''(i) in the case of a 30-percent home, $1,250, and

''(ii) in the case of a 50-percent home, $2,000.

''(B) 30- OR 50-PERCENT HOME.—For purposes of subparagraph (A)—

''(i) 30-PERCENT HOME.—The term '30-percent home' means a qualifying new home which is certified to have a projected level of annual heating and cooling energy consumption, measured in terms of average annual energy cost to the homeowner, which is at least 30 percent less than the annual level of heating and cooling energy consumption of a reference qualifying new home constructed in accordance with the standards of chapter 4 of the 2000 International Energy Conservation Code, or a qualifying new home which is a manufactured home which meets the applicable standards of the Energy Star program managed jointly by the Environmental Protection Agency and the Department of Energy.

''(ii) 50-PERCENT HOME.—The term '50-percent home' means a qualifying new home which is certified to have a projected level of annual heating and cooling energy consumption, measured in terms of average annual energy cost to the homeowner, which is at least 50 percent less than such annual level of heating and cooling energy consumption.

''(C) PRIOR CREDIT AMOUNTS ON SAME HOME TAKEN INTO ACCOUNT.—If a credit was allowed under subsection (a) with respect to a qualifying new home in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that home shall not exceed the amount under clause (i) or (ii) of subparagraph (A) (as the case may be), reduced by the sum of the credits allowed under subsection (a) with respect to the home for all prior taxable years.

''(2) COORDINATION WITH REHABILITATION AND ENERGY CREDITS.—For purposes of this section—

''(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to the rehabilitation credit (as determined under section 47(a)) or to the energy percentage of energy property (as determined under section 48(a)), and

''(B) expenditures taken into account under either section 47 or 48(a) shall not be taken into account under this section.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means the person who constructed the qualifying new home, or in the case of a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280), the manufactured home producer of such home.

''(2) ENERGY EFFICIENT PROPERTY.—The term 'energy efficient property' means any energy efficient building envelope component, and any energy efficient heating or cooling equipment which can, individually or in combination with other components, meet the requirements of this section.

''(3) QUALIFYING NEW HOME.—The term 'qualifying new home' means a dwelling—

''(A) located in the United States,

''(B) the construction of which is substantially completed after the date of the enactment of this section, and

''(C) the first use of which after construction is as a principal residence (within the meaning of section 121).

''(4) CONSTRUCTION.—The term 'construction' includes reconstruction and rehabilitation.

''(5) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a qualifying new home when installed in or on such home, and

''(B) exterior windows (including skylights) and doors.

''(6) MANUFACTURED HOME INCLUDED.—The term 'qualifying new home' includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(d) CERTIFICATION.—

''(1) METHOD OF CERTIFICATION.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be determined either by a component-based method or a performance-based method.

''(B) COMPONENT-BASED METHOD.—A component-based method is a method which uses the applicable technical energy efficiency specifications or ratings (including product labeling requirements) for the energy efficient building envelope component or energy efficient heating or cooling equipment. The Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, develop prescriptive component-based packages that are equivalent in energy performance to properties that qualify under subparagraph (C).

''(C) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—A performance-based method is a method which calculates projected energy usage and cost reductions in the qualifying new home in relation to a reference qualifying new home—

''(I) heated by the same energy source and heating system type, and

''(II) constructed in accordance with the standards of chapter 4 of the 2000 International Energy Conservation Code.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy. Such regulations on the specifications for software and verification protocols shall be based on the 2001 California Residential Alternative Calculation Method Approval Manual.

''(2) PROVIDER.—A certification described in subsection (b)(1)(B) shall be provided by—

''(A) in the case of a component-based method, a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or a home energy rating organization, or

''(B) in the case of a performance-based method, an individual recognized by an organization designated by the Secretary for such purposes.

''(3) FORM.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance, and in the case of a performance-based method, accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such qualifying new home.

''(B) FORM PROVIDED TO BUYER.—A form documenting the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their rated energy efficiency performance shall be provided to the buyer of the qualifying new home. The form shall include labeled R-value for insulation products, NFRC-labeled U-factor and Solar Heat Gain Coefficient for windows, skylights, and doors, labeled AFUE ratings for furnaces and boilers, labeled HSPF ratings for electric heat pumps, and labeled SEER ratings for air conditioners.

''(C) RATINGS LABEL AFFIXED IN DWELLING.—A permanent label documenting the ratings in subparagraph (B) shall be affixed to the front of the electrical distribution panel of the qualifying new home, or shall be otherwise permanently displayed in a readily inspectable location in such home.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for performance-based certification methods, the Secretary, after examining the requirements for energy consultants and home energy ratings providers specified by the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems, shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a qualifying new home to

be eligible for the credit under this section regardless of whether such home uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the homebuyer.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

''(e) TERMINATION.—Subsection (a) shall apply to qualifying new homes purchased during the period beginning on the date of the enactment of this section and ending on December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting '', plus'', and by adding at the end the following new paragraph:

''(18) the new energy efficient home credit determined under section 45G(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end the following new subsection:

''(d) NEW ENERGY EFFICIENT HOME EXPENSES.—No deduction shall be allowed for that portion of expenses for a qualifying new home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45G(a).''.

(d) LIMITATION ON CARRYBACK.—Subsection (d) of section 39, as amended by this Act, is amended by adding at the end the following new paragraph:

''(13) NO CARRYBACK OF NEW ENERGY EFFICIENT HOME CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45G may be carried back to any taxable year ending on or before the date of the enactment of section 45G.''.

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Subsection (c) of section 196, as amended by this Act, is amended by striking ''and'' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting '', and'', and by adding after paragraph (11) the following new paragraph:

''(12) the new energy efficient home credit determined under section 45G(a).''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45G. New energy efficient home credit.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 2102. CREDIT FOR ENERGY EFFICIENT APPLIANCES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the applicable amount determined under subsection (b) with respect to the eligible production of qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

''(b) APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.—For purposes of subsection (a)—

''(1) APPLICABLE AMOUNT.—The applicable amount is—

''(A) $50, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.26 MEF, or

''(ii) a refrigerator which consumes at least 10 percent less kWh per year than the energy conservation standards for refrigerators promulgated by the Department of Energy effective July 1, 2001, and

''(B) $100, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.42 MEF (at least 1.5 MEF for washers produced after 2004), or

''(ii) a refrigerator which consumes at least 15 percent less kWh per year than such energy conservation standards.

''(2) ELIGIBLE PRODUCTION.—

''(A) IN GENERAL.—The eligible production of each category of qualified energy efficient appliances is the excess of—

''(i) the number of appliances in such category which are produced by the taxpayer during such calendar year, over

''(ii) the average number of appliances in such category which were produced by the taxpayer during calendar years 1999, 2000, and 2001.

''(B) CATEGORIES.—For purposes of subparagraph (A), the categories are—

''(i) clothes washers described in paragraph (1)(A)(i),

''(ii) clothes washers described in paragraph (1)(B)(i),

''(iii) refrigerators described in paragraph (1)(A)(ii), and

''(iv) refrigerators described in paragraph (1)(B)(ii).

''(c) LIMITATION ON MAXIMUM CREDIT.—

''(1) IN GENERAL.—The maximum amount of credit allowed under subsection (a) with respect to a taxpayer for all taxable years shall be—

''(A) $30,000,000 with respect to the credit determined under subsection (b)(1)(A), and

''(B) $30,000,000 with respect to the credit determined under subsection (b)(1)(B).

''(2) LIMITATION BASED ON GROSS RECEIPTS.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

''(3) GROSS RECEIPTS.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

''(A) a clothes washer described in subparagraph (A)(i) or (B)(i) of subsection (b)(1), or

''(B) a refrigerator described in subparagraph (A)(ii) or (B)(ii) of subsection (b)(1).

''(2) CLOTHES WASHER.—The term 'clothes washer' means a residential clothes washer, including a residential style coin operated washer.

''(3) REFRIGERATOR.—The term 'refrigerator' means an automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

''(4) MEF.—The term 'MEF' means Modified Energy Factor (as determined by the Secretary of Energy).

''(e) SPECIAL RULES.—

''(1) IN GENERAL.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.

''(2) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as 1 person for purposes of subsection (a).

''(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

''(g) TERMINATION.—This section shall not apply—

''(1) with respect to refrigerators described in subsection (b)(1)(A)(ii) produced after December 31, 2004, and

''(2) with respect to all other qualified energy efficient appliances produced after December 31, 2006.''.

(b) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(14) NO CARRYBACK OF ENERGY EFFICIENT APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy efficient appliance credit determined under section 45H may be carried to a taxable year ending before January 1, 2003.''.

(c) CONFORMING AMENDMENT.—Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting '', plus'', and by adding at the end the following new paragraph:

''(19) the energy efficient appliance credit determined under section 45H(a).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45H. Energy efficient appliance credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2002, in taxable years ending after such date.

SEC. 2103. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year,

''(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

''(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,

''(4) 30 percent of the qualified wind energy property expenditures made by the taxpayer during such year, and

''(5) the sum of the qualified Tier 2 energy efficient building property expenditures made by the taxpayer during such year.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed—

''(A) $2,000 for property described in subsection (d)(1),

''(B) $2,000 for property described in subsection (d)(2),

''(C) $1,000 for each kilowatt of capacity of property described in subsection (d)(4),

''(D) $2,000 for property described in subsection (d)(5), and

''(E) for property described in subsection (d)(6)—

''(i) $75 for each electric heat pump water heater,

''(ii) $250 for each electric heat pump,

''(iii) $250 for each advanced natural gas furnace,

''(iv) $250 for each central air conditioner,

''(v) $75 for each natural gas water heater, and

''(vi) $250 for each geothermal heat pump.

''(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless—

''(A) in the case of solar water heating property, such property is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed,

''(B) in the case of a photovoltaic property, a fuel cell property, or a wind energy property, such property meets appropriate fire and electric code requirements, and

''(C) in the case of property described in subsection (d)(6), such property meets the performance and quality standards, and the certification requirements (if any), which—

''(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate),

''(ii) in the case of the energy efficiency ratio (EER)—

''(I) require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

''(II) do not require ratings to be based on certified data of the Air Conditioning and Refrigeration Institute, and

''(iii) are in effect at the time of the acquisition of the property.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term 'qualified solar water heating property expenditure' means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

''(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term 'qualified photovoltaic property expenditure' means an expenditure for property that uses solar energy to generate electricity for use in such a dwelling unit.

''(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

''(4) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term 'qualified fuel cell property expenditure' means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with such a dwelling unit.

''(5) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.—The term 'qualified wind energy property expenditure' means an expenditure for property which uses wind energy to generate electricity for use in such a dwelling unit.

''(6) QUALIFIED TIER 2 ENERGY EFFICIENT BUILDING PROPERTY EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified Tier 2 energy efficient building property expenditure' means an expenditure for any Tier 2 energy efficient building property.

''(B) TIER 2 ENERGY EFFICIENT BUILDING PROPERTY.—The term 'Tier 2 energy efficient building property' means—

''(i) an electric heat pump water heater which yields an energy factor of at least 1.7 in the standard Department of Energy test procedure,

''(ii) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 12.5,

''(iii) an advanced natural gas furnace which achieves at least 95 percent annual fuel utilization efficiency (AFUE),

''(iv) a central air conditioner which has a seasonal energy efficiency ratio (SEER) of at least 15 and an energy efficiency ratio (EER) of at least 12.5,

''(v) a natural gas water heater which has an energy factor of at least 0.80 in the standard Department of Energy test procedure, and

''(vi) a geothermal heat pump which has an energy efficiency ratio (EER) of at least 21.

''(7) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in paragraph (1), (2), (4), (5), or (6) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

''(8) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following shall apply:

''(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) ALLOCATION IN CERTAIN CASES.—Except in the case of qualified wind energy property expenditures, if less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

''(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

''(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

''(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

''(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken in to account expenditures which are made from subsidized energy financing (as defined in section 48(a)(5)(C)).

''(f) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(g) TERMINATION.—The credit allowed under this section shall not apply to expenditures after December 31, 2007.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25C(b), as added by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B) is amended by inserting ''and section 25C'' after ''this section''.

(C) Section 24(b)(3)(B) is amended by striking ''23 and 25B'' and inserting ''23, 25B, and 25C''.

(D) Section 25(e)(1)(C) is amended by inserting ''25C,'' after ''25B,''.

(E) Section 25B(g)(2) is amended by striking ''section 23'' and inserting ''sections 23 and 25C''.

(F) Section 26(a)(1) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(G) Section 904(h) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(H) Section 1400C(d) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c), as in effect for taxable years beginning before January 1, 2004, is amended by striking ''section 1400C'' and inserting ''sections 25C and 1400C''.

(2) Section 25(e)(1)(C), as in effect for taxable years beginning before January 1, 2004, is amended by inserting '', 25Cs,'' after ''sections 23''.

(3) Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', and'', and by adding at the end the following new paragraph:

''(31) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C.''.

(4) Section 1400C(d), as in effect for taxable years beginning before January 1, 2004, is amended by inserting ''and section 25C'' after ''this section''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by

inserting after the item relating to section 25B the following new item:

''Sec. 25C. Residential energy efficient property.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to expenditures after December 31, 2002, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

SEC. 2104. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS AND STATIONARY MICROTURBINE POWER PLANTS.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) qualified fuel cell property or qualified microturbine property,''.

(b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—Subsection (a) of section 48 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—For purposes of this subsection—

''(A) QUALIFIED FUEL CELL PROPERTY.—

''(i) IN GENERAL.—The term 'qualified fuel cell property' means a fuel cell power plant that—

''(I) generates at least 0.5 kilowatt of electricity using an electrochemical process, and

''(II) has an electricity-only generation efficiency greater than 30 percent.

''(ii) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(I) 30 percent of the basis of such property, or

''(II) $500 for each 0.5 kilowatt of capacity of such property.

''(iii) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

''(iv) TERMINATION.—Such term shall not include any property placed in service after December 31, 2007.

''(B) QUALIFIED MICROTURBINE PROPERTY.—

''(i) IN GENERAL.—The term ''qualified microturbine property' means a stationary microturbine power plant which has an electricity-only generation efficiency not less than 26 percent at International Standard Organization conditions.

''(ii) LIMITATION.—In the case of qualified microturbine property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(I) 10 percent of the basis of such property, or

''(II) $200 for each kilowatt of capacity of such property.

''(iii) STATIONARY MICROTURBINE POWER PLANT.—The term 'stationary microturbine power plant means a system comprising of a rotary engine which is actuated by the aerodynamic reaction or impulse or both on radial or axial curved full-circumferential-admission airfoils on a central axial rotating spindle. Such system—

''(I) commonly includes an air compressor, combustor, gas pathways which lead compressed air to the combustor and which lead hot combusted gases from the combustor to 1 or more rotating turbine spools, which in turn drive the compressor and power output shaft,

''(II) includes a fuel compressor, recuperator/regenerator, generator or alternator, integrated combined cycle equipment, cooling-heating-and-power equipment, sound attenuation apparatus, and power conditioning equipment, and

''(III) includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

''(iv) TERMINATION.—Such term shall not include any property placed in service after December 31, 2006.''.

(c) LIMITATION.—Section 48(a)(2)(A) (relating to energy percentage) is amended to read as follows:

''(A) IN GENERAL.—The energy percentage is—

''(i) in the case of qualified fuel cell property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''.

(d) CONFORMING AMENDMENTS.—

(A) Section 29(b)(3)(A)(i)(III) is amended by striking ''section 48(a)(4)(C)'' and inserting ''section 48(a)(5)(C)''.

(B) Section 48(a)(1) is amended by inserting ''except as provided in subparagraph (A)(ii) or (B)(ii) of paragraph (4),'' before ''the energy''.

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2002, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 2105. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by inserting after section 179A the following new section:

''SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

''(a) IN GENERAL.—There shall be allowed as a deduction for the taxable year an amount equal to the energy efficient commercial building property expenditures made by a taxpayer for the taxable year.

''(b) MAXIMUM AMOUNT OF DEDUCTION.—The amount of energy efficient commercial building property expenditures taken into account under subsection (a) shall not exceed an amount equal to the product of—

''(1) $2.25, and

''(2) the square footage of the building with respect to which the expenditures are made.

''(c) YEAR DEDUCTION ALLOWED.—The deduction under subsection (a) shall be allowed in the taxable year in which the construction of the building is completed.

''(d) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'energy efficient commercial building property expenditures' means an amount paid or incurred for energy efficient commercial building property installed on or in connection with new construction or reconstruction of property—

''(A) for which depreciation is allowable under section 167,

''(B) which is located in the United States, and

''(C) the construction or erection of which is completed by the taxpayer.

Such property includes all residential rental property, including low-rise multifamily structures and single family housing property which is not within the scope of Standard 90.1–1999 (described in paragraph (2)). Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

''(2) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'energy efficient commercial building property' means any property which reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a reference building which meets the requirements of Standard 90.1–1999 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America using methods of calculation under subparagraph (B) and certified by qualified professionals as provided under paragraph (5).

''(B) METHODS OF CALCULATION.—The Secretary, in consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, taking into consideration the provisions of the 2001 California Nonresidential Alternative Calculation Method Approval Manual. These regulations shall meet the following requirements:

''(i) In calculating tradeoffs and energy performance, the regulations shall prescribe the costs per unit of energy and power, such as kilowatt hour, kilowatt, gallon of fuel oil, and cubic foot or Btu of natural gas, which may be dependent on time of usage.

''(ii) The calculational methodology shall require that compliance be demonstrated for a whole building. If some systems of the building, such as lighting, are designed later than other systems of the building, the method shall provide that either—

''(I) the expenses taken into account under paragraph (1) shall not occur until the date designs for all energy-using systems of the building are completed,

''(II) the energy performance of all systems and components not yet designed shall be assumed to comply minimally with the requirements of such Standard 90.1–1999, or

''(III) the expenses taken into account under paragraph (1) shall be a fraction of such expenses based on the performance of less than all energy-using systems in accordance with clause (iii).

''(iii) The expenditures in connection with the design of subsystems in the building, such as the envelope, the heating, ventilation, air conditioning and water heating system, and the lighting system shall be allocated to the appropriate building subsystem based on system-specific energy cost savings targets in regulations promulgated by the Secretary of Energy which are equivalent, using the calculation methodology, to the whole building requirement of 50 percent savings.

''(iv) The calculational methods under this subparagraph need not comply fully with section 11 of such Standard 90.1–1999.

''(v) The calculational methods shall be fuel neutral, such that the same energy efficiency features shall qualify a building for the deduction under this subsection regardless of whether the heating source is a gas or oil furnace or an electric heat pump.

''(vi) The calculational methods shall provide appropriate calculated energy savings for design methods and technologies not otherwise credited in either such Standard 90.1–1999 or in the 2001 California Nonresidential Alternative Calculation Method Approval Manual, including the following:

''(I) Natural ventilation.

''(II) Evaporative cooling.

''(III) Automatic lighting controls such as occupancy sensors, photocells, and timeclocks.

''(IV) Daylighting.

''(V) Designs utilizing semi-conditioned spaces that maintain adequate comfort conditions without air conditioning or without heating.

''(VI) Improved fan system efficiency, including reductions in static pressure.

''(VII) Advanced unloading mechanisms for mechanical cooling, such as multiple or variable speed compressors.

''(VIII) The calculational methods may take into account the extent of commissioning in the building, and allow the taxpayer to take into account measured performance that exceeds typical performance.

''(C) COMPUTER SOFTWARE.—

''(i) IN GENERAL.—Any calculation under this paragraph shall be prepared by qualified computer software.

''(ii) QUALIFIED COMPUTER SOFTWARE.—For purposes of this subparagraph, the term 'qualified computer software' means software—

''(I) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,

''(II) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this subsection, and

''(III) which provides a notice form which summarizes the energy efficiency features of the building and its projected annual energy costs.

''(3) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.—In the case of energy efficient commercial building property installed on or in public property, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the public entity which is the owner of such property. Such person shall be treated as the taxpayer for purposes of this subsection.

''(4) NOTICE TO OWNER.—The qualified individual shall provide an explanation to the owner of the building regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (2)(C)(ii)(III).

''(5) CERTIFICATION.—

''(A) IN GENERAL.—Except as provided in this paragraph, the Secretary shall prescribe procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

''(B) QUALIFIED INDIVIDUALS.—Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes. The Secretary may qualify a Home Ratings Systems Organization, a local building code agency, a State or local energy office, a utility, or any other organization which meets the requirements prescribed under this section.

''(C) PROFICIENCY OF QUALIFIED INDIVIDUALS.—The Secretary shall consult with nonprofit organizations and State agencies with expertise in energy efficiency calculations and inspections to develop proficiency tests and training programs to qualify individuals to determine compliance.

''(e) BASIS REDUCTION.—For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property, the basis of such property shall be reduced by the amount of the deduction so allowed.

''(f) REGULATIONS.—The Secretary shall promulgate such regulations as necessary to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section.

''(g) TERMINATION.—This section shall not apply with respect to any energy efficient commercial building property expenditures in connection with property—

''(1) the plans for which are not certified under subsection (d)(5) on or before December 31, 2007, and

''(2) the construction of which is not completed on or before December 31, 2009.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 179B(e).''.

(2) Section 1245(a) is amended by inserting ''179B,'' after ''179A,'' both places it appears in paragraphs (2)(C) and (3)(C).

(3) Section 1250(b)(3) is amended by inserting before the period at the end of the first sentence ''or by section 179B''.

(4) Section 263(a)(1) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by inserting after subparagraph (H) the following new subparagraph:

''(I) expenditures for which a deduction is allowed under section 179B.''.

(5) Section 312(k)(3)(B) is amended by striking ''or 179A'' each place it appears in the heading and text and inserting '', 179A, or 179B''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after section 179A the following new item:

''Sec. 179B. Energy efficient commercial buildings deduction.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after September 30, 2002.

SEC. 2106. ALLOWANCE OF DEDUCTION FOR QUALIFIED NEW OR RETROFITTED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179B the following new section:

''SEC. 179C. DEDUCTION FOR QUALIFIED NEW OR RETROFITTED ENERGY MANAGEMENT DEVICES.

''(a) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who is a supplier of electric energy or natural gas or a provider of electric energy or natural gas services, there shall be allowed as a deduction an amount equal to the cost of each qualified energy management device placed in service during the taxable year.

''(b) MAXIMUM DEDUCTION.—The deduction allowed by this section with respect to each qualified energy management device shall not exceed $30.

''(c) QUALIFIED ENERGY MANAGEMENT DEVICE.—The term 'qualified energy management device' means any tangible property to which section 168 applies if such property is a meter or metering device—

''(1) which is acquired and used by the taxpayer to enable consumers to manage their purchase or use of electricity or natural gas in response to energy price and usage signals, and

''(2) which permits reading of energy price and usage signals on at least a daily basis.

''(d) PROPERTY USED OUTSIDE THE UNITED STATES NOT QUALIFIED.—No deduction shall be allowed under subsection (a) with respect to property which is used predominantly outside the United States or with respect to the portion of the cost of any property taken into account under section 179.

''(e) BASIS REDUCTION.—

''(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the amount of the deduction with respect to such property which is allowed by subsection (a).

''(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property that is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', or'', and by inserting after subparagraph (I) the following new subparagraph:

''(J) expenditures for which a deduction is allowed under section 179C.''.

(2) Section 312(k)(3)(B), as amended by this Act, is amended by striking ''or 179B'' each place it appears in the heading and text and inserting '', 179B, or 179C''.

(3) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting '', and'', and by adding at the end the following new paragraph:

''(33) to the extent provided in section 179C(e)(1).''.

(4) Section 1245(a), as amended by this Act, is amended by inserting ''179C,'' after ''179B,'' both places it appears in paragraphs (2)(C) and (3)(C).

(5) The table of contents for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179B the following new item:

''Sec. 179C. Deduction for qualified new or retrofitted energy management devices.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified energy management devices placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 2107. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Subparagraph (A) of section 168(e)(3) (relating to classification of property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) any qualified energy management device.''.

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules) is amended by inserting at the end the following new paragraph:

''(15) QUALIFIED ENERGY MANAGEMENT DEVICE.—The term 'qualified energy management device' means any qualified energy management device as defined in section 179C(c) which is placed in service by a taxpayer who is a supplier of electric energy or natural gas or a provider of electric energy or natural gas services.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 2108. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property), as amended by this Act, is amended by striking ''or'' at the end of clause (ii), by adding ''or'' at the end of clause (iii), and by inserting after clause (iii) the following new clause:

''(iv) combined heat and power system property,''.

(b) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Subsection (a) of section 48, as amended by this Act, is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

''(5) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of this subsection—

''(A) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

''(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

''(ii) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities,

''(iii) which produces—

''(I) at least 20 percent of its total useful energy in the form of thermal energy, and

''(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

''(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical energy capacities), and

''(v) which is placed in service after December 31, 2002, and before January 1, 2007.

''(B) SPECIAL RULES.—

''(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of subparagraph (A)(iv), the energy efficiency percentage of a system is the fraction—

''(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

''(II) the denominator of which is the lower heating value of the primary fuel source for the system.

''(ii) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under subparagraph (A)(iii) shall be determined on a Btu basis.

''(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

''(iv) PUBLIC UTILITY PROPERTY.—

''(I) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(10)), the taxpayer may only claim the credit under the subsection if, with respect to such property, the taxpayer uses a normalization method of accounting.

''(II) CERTAIN EXCEPTION NOT TO APPLY.—The matter following paragraph (3)(D) shall not apply to combined heat and power system property.

''(v) NONAPPLICATION OF CERTAIN RULES.—For purposes of determining if the term 'combined heat and power system property' includes technologies which generate electricity or mechanical power using back-pressure steam turbines in place of existing pressure-reducing valves or which make use of waste heat from industrial processes such as by using organic rankin, stirling, or kalina heat engine systems, subparagraph (A) shall be applied without regard to clauses (iii) and (iv) thereof.

''(C) EXTENSION OF DEPRECIATION RECOVERY PERIOD.—If a taxpayer is allowed credit under this section for combined heat and power system property and such property would (but for this subparagraph) have a class life of 15 years or less under section 168, such property shall be treated as having a 22-year class life for purposes of section 168.''.

(c) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—Subsection (d) of section 39, as amended by this Act, is amended by adding at the end the following new paragraph:

''(15) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy credit with respect to property described in section 48(a)(5) may be carried back to a taxable year ending before January 1, 2003.''.

(d) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(6), as added by this Act, is amended by striking ''section 48(a)(5)(C)'' and inserting ''section 48(a)(6)(C)''.

(B) Section 29(b)(3)(A)(i)(III), as amended by this Act, is amended by striking ''section 48(a)(5)(C)'' and inserting ''section 48(a)(6)(C)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2002, in taxable years ending after such date.

SEC. 2109. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by this Act, is amended by inserting after section 25C the following new section:

''SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed by this section with respect to a dwelling shall not exceed $300.

''(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER ON SAME DWELLING TAKEN INTO ACCOUNT.—If a credit was allowed to the taxpayer under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of $300 reduced by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all prior taxable years.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section) for any taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term 'qualified energy efficiency improvements' means any energy efficient building envelope component which is certified to meet or exceed the prescriptive criteria for such component in the 2000 International Energy Conservation Code, any energy efficient building envelope component which is described in subsection (f)(4)(B) and is certified by the Energy Star program managed jointly by the Environmental Protection Agency and the Department of Energy, or any combination of energy efficiency measures which are certified as achieving at least a 30 percent reduction in heating and cooling energy usage for the dwelling (as measured in terms of energy cost to the taxpayer), if—

''(1) such component or combination of measures is installed in or on a dwelling—

''(A) located in the United States, and

''(B) owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

''(2) the original use of such component or combination of measures commences with the taxpayer, and

''(3) such component or combination of measures reasonably can be expected to remain in use for at least 5 years.

''(e) CERTIFICATION.—

''(1) METHODS OF CERTIFICATION.—

''(A) COMPONENT-BASED METHOD.—The certification described in subsection (d) for any component described in such subsection shall be determined on the basis of applicable energy efficiency ratings (including product labeling requirements) for affected building envelope components.

''(B) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—The certification described in subsection (d) for any combination of measures described in such subsection shall be—

''(I) determined by comparing the projected heating and cooling energy usage for the dwelling to such usage for such dwelling in its original condition, and

''(II) accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such dwelling.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy. Such regulations on the specifications for software and verification protocols shall be based on the 2001 California Residential Alternative Calculation Method Approval Manual.

''(2) PROVIDER.—A certification described in subsection (d) shall be provided by—

''(A) in the case of the method described in paragraph (1)(A), by a third party, such as a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or a home energy rating organization, or

''(B) in the case of the method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

''(3) FORM.—A certification described in subsection (d) shall be made in writing on forms which specify in readily inspectable fashion the energy efficient components and other measures and their respective efficiency ratings, and which include a permanent label affixed to the electrical distribution panel of the dwelling.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for certification methods described in paragraph (1)(B), the Secretary, after examining the requirements for energy consultants and home energy ratings providers specified by the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems, shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a dwelling to be eligible for the credit under this section regardless of whether such dwelling uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the owner of the dwelling.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

''(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following shall apply:

''(A) The amount of the credit allowable under subsection (a) by reason of expenditures for the qualified energy efficiency improvements made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of

such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having paid the individual's proportionate share of the cost of qualified energy efficiency improvements made by such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) insulation material or system which is specifically and primarily designed to reduce the heat loss or gain or a dwelling when installed in or on such dwelling,

''(B) exterior windows (including skylights), and

''(C) exterior doors.

''(5) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term 'dwelling' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(h) APPLICATION OF SECTION.—Subsection (a) shall apply to qualified energy efficiency improvements installed during the period beginning on the date of the enactment of this section and ending on December 31, 2006.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25D(b), as added by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25D(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B), as amended by this Act, is amended by striking ''section 25C'' and inserting ''sections 25C and 25D''.

(C) Section 24(b)(3)(B), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(D) Section 25(e)(1)(C), as amended by this Act, is amended by inserting ''25D,'' after ''25C,''.

(E) Section 25B(g)(2), as amended by this Act, is amended by striking ''23 and 25C'' and inserting ''23, 25C, and 25D''.

(F) Section 26(a)(1), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(G) Section 904(h), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(H) Section 1400C(d), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting '', 25D,'' after ''sections 25C''.

(2) Section 25(e)(1)(C), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting ''25D,'' after ''25C,''.

(3) Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting ''; and'', and by adding at the end the following new paragraph:

''(34) to the extent provided in section 25D(f), in the case of amounts with respect to which a credit has been allowed under section 25D.''.

(4) Section 1400C(d), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by striking ''section 25C'' and inserting ''sections 25C and 25D''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 25C the following new item:

''Sec. 25D. Energy efficiency improvements to existing homes.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to expenditures after December 31, 2002, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

SEC. 2110. ALLOWANCE OF DEDUCTION FOR QUALIFIED NEW OR RETROFITTED WATER SUBMETERING DEVICES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179D the following new section:

''SEC. 179E. DEDUCTION FOR QUALIFIED NEW OR RETROFITTED WATER SUBMETERING DEVICES.

''(a) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who is an eligible resupplier, there shall be allowed as a deduction an amount equal to the cost of each qualified water submetering device placed in service during the taxable year.

''(b) MAXIMUM DEDUCTION.—The deduction allowed by this section with respect to each qualified water submetering device shall not exceed $30.

''(c) ELIGIBLE RESUPPLIER.—For purposes of this section, the term 'eligible resupplier' means any taxpayer who purchases and installs qualified water submetering devices in every unit in any multi-unit property.

''(d) QUALIFIED WATER SUBMETERING DEVICE.—The term 'qualified water submetering device' means any tangible property to which section 168 applies if such property is a submetering device (including ancillary equipment)—

''(1) which is purchased and installed by the taxpayer to enable consumers to manage their purchase or use of water in response to water price and usage signals, and

''(2) which permits reading of water price and usage signals on at least a daily basis.

''(e) PROPERTY USED OUTSIDE THE UNITED STATES NOT QUALIFIED.—No deduction shall be allowed under subsection (a) with respect to property which is used predominantly outside the United States or with respect to the portion of the cost of any property taken into account under section 179.

''(f) BASIS REDUCTION.—

''(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the amount of the deduction with respect to such property which is allowed by subsection (a).

''(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property that is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

''(g) TERMINATION.—This section shall not apply to any property placed in service after December 31, 2007.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting '', or'', and by inserting after subparagraph (K) the following new subparagraph:

''(L) expenditures for which a deduction is allowed under section 179E.''.

(2) Section 312(k)(3)(B), as amended by this Act, is amended by striking ''or 179D'' each place it appears in the heading and text and inserting '', 179D, or 179E''.

(3) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting '', and'', and by adding at the end the following new paragraph:

''(36) to the extent provided in section 179E(f)(1).''.

(4) Section 1245(a), as amended by this Act, is amended by inserting ''179E,'' after ''179D,'' both places it appears in paragraphs (2)(C) and (3)(C).

(5) The table of contents for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179D the following new item:

''Sec. 179E. Deduction for qualified new or retrofitted water submetering devices.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified water submetering devices placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 2111. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED WATER SUBMETERING DEVICES.

(a) IN GENERAL.—Subparagraph (A) of section 168(e)(3) (relating to classification of property) is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) any qualified water submetering device.''.

(b) DEFINITION OF QUALIFIED WATER SUBMETERING DEVICE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following new paragraph:

''(16) QUALIFIED WATER SUBMETERING DEVICE.—The term 'qualified water submetering device' means any qualified water submetering device (as defined in section 179E(d)) which is placed in service before January 1, 2008, by a taxpayer who is an eligible resupplier (as defined in section 179E(c)).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

TITLE XXII—CLEAN COAL INCENTIVES

Subtitle A—Credit for Emission Reductions and Efficiency Improvements in Existing Coal-Based Electricity Generation Facilities

SEC. 2201. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

(a) CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—Subpart

D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 45I. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying clean coal technology production credit of any taxpayer for any taxable year is equal to the product of—

''(1) the applicable amount of clean coal technology production credit, multiplied by

''(2) the applicable percentage of the kilowatt hours of electricity produced by the taxpayer during such taxable year at a qualifying clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was returned to service after becoming a qualifying clean coal technology unit.

''(b) APPLICABLE AMOUNT.—

''(1) IN GENERAL.—For purposes of this section, the applicable amount of clean coal technology production credit is equal to $0.0034.

''(2) INFLATION ADJUSTMENT.—For calendar years after 2003, the applicable amount of clean coal technology production credit shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (e) bears to the total megawatt capacity of such unit.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—The term 'qualifying clean coal technology unit' means a clean coal technology unit of the taxpayer which—

''(A) on the date of the enactment of this section was a coal-based electricity generating steam generator-turbine unit which was not a clean coal technology unit,

''(B) has a nameplate capacity rating of not more than 300,000 kilowatts,

''(C) becomes a clean coal technology unit as the result of the retrofitting, repowering, or replacement of the unit with clean coal technology during the 10-year period beginning on the date of the enactment of this section,

''(D) is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy, and

''(E) receives an allocation of a portion of the national megawatt capacity limitation under subsection (e).

''(2) CLEAN COAL TECHNOLOGY UNIT.—The term 'clean coal technology unit' means a unit which—

''(A) uses clean coal technology, including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion, integrated gasification combined cycle, or any other technology for the production of electricity,

''(B) uses coal to produce 75 percent or more of its thermal output as electricity,

''(C) has a design net heat rate of at least 500 less than that of such unit as described in paragraph (1)(A),

''(D) has a maximum design net heat rate of not more than 9,500, and

''(E) meets the pollution control requirements of paragraph (3).

''(3) POLLUTION CONTROL REQUIREMENTS.—

''(A) IN GENERAL.—A unit meets the requirements of this paragraph if—

''(i) its emissions of sulfur dioxide, nitrogen oxide, or particulates meet the lower of the emission levels for each such emission specified in—

''(I) subparagraph (B), or

''(II) the new source performance standards of the Clean Air Act (42 U.S.C. 7411) which are in effect for the category of source at the time of the retrofitting, repowering, or replacement of the unit, and

''(ii) its emissions do not exceed any relevant emission level specified by regulation pursuant to the hazardous air pollutant requirements of the Clean Air Act (42 U.S.C. 7412) in effect at the time of the retrofitting, repowering, or replacement.

''(B) SPECIFIC LEVELS.—The levels specified in this subparagraph are—

''(i) in the case of sulfur dioxide emissions, 50 percent of the sulfur dioxide emission levels specified in the new source performance standards of the Clean Air Act (42 U.S.C. 7411) in effect on the date of the enactment of this section for the category of source,

''(ii) in the case of nitrogen oxide emissions—

''(I) 0.1 pound per million Btu of heat input if the unit is not a cyclone-fired boiler, and

''(II) if the unit is a cyclone-fired boiler, 15 percent of the uncontrolled nitrogen oxide emissions from such boilers, and

''(iii) in the case of particulate emissions, 0.02 pound per million Btu of heat input.

''(4) DESIGN NET HEAT RATE.—The design net heat rate with respect to any unit, measured in Btu per kilowatt hour (HHV)—

''(A) shall be based on the design annual heat input to and the design annual net electrical output from such unit (determined without regard to such unit's co-generation of steam),

''(B) shall be adjusted for the heat content of the design coal to be used by the unit if it is less than 12,000 Btu per pound according to the following formula:

Design net heat rate = Unit net heat rate X [1-{((12,000-design coal heat content, Btu per pound)/1,000) X 0.013γ], and

''(C) shall be corrected for the site reference conditions of—

''(i) elevation above sea level of 500 feet,

''(ii) air pressure of 14.4 pounds per square inch absolute (psia),

''(iii) temperature, dry bulb of 63°F,

''(iv) temperature, wet bulb of 54°F, and

''(v) relative humidity of 55 percent.

''(5) HHV.—The term 'HHV' means higher heating value.

''(6) APPLICATION OF CERTAIN RULES.—The rules of paragraphs (3), (4), and (5) of section 45(d) shall apply.

''(7) INFLATION ADJUSTMENT FACTOR.—

''(A) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2002.

''(B) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means the most recent revision of the implicit price deflator for the gross domestic product as computed by the Department of Commerce before March 15 of the calendar year.

''(8) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this section, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying clean coal technology unit during such period.

''(e) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF QUALIFYING CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of subsection (d)(1)(E), the national megawatt capacity limitation for qualifying clean coal technology units is 4,000 megawatts.

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection,

''(B) to limit the capacity of any qualifying clean coal technology unit to which this section applies so that the combined megawatt capacity allocated to all such units under this subsection when all such units are placed in service during the 10-year period described in subsection (d)(1)(C), does not exceed 4,000 megawatts,

''(C) to provide a certification process under which the Secretary, in consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation—

''(i) to encourage that units with the highest thermal efficiencies, when adjusted for the heat content of the design coal and site reference conditions described in subsection (d)(4)(C), and environmental performance be placed in service as soon as possible,

''(ii) to allocate capacity to taxpayers that have a definite and credible plan for placing into commercial operation a qualifying clean coal technology unit, including—

''(I) a site,

''(II) contractual commitments for procurement and construction or, in the case of regulated utilities, the agreement of the State utility commission,

''(III) filings for all necessary preconstruction approvals,

''(IV) a demonstrated record of having successfully completed comparable projects on a timely basis, and

''(V) such other factors that the Secretary determines are appropriate,

''(D) to allocate the national megawatt capacity limitation to a portion of the capacity of a qualifying clean coal technology unit if the Secretary determines that such an allocation would maximize the amount of efficient production encouraged with the available tax credits,

''(E) to set progress requirements and conditional approvals so that capacity allocations for clean coal technology units that become unlikely to meet the necessary conditions for qualifying can be reallocated by the Secretary to other clean coal technology units, and

''(F) to provide taxpayers with opportunities to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting '', plus'', and by adding at the end the following new paragraph:

''(20) the qualifying clean coal technology production credit determined under section 45I(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(16) NO CARRYBACK OF SECTION 45I CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying clean coal technology production credit determined under section 45I may be carried back to a taxable year ending on or before the date of the enactment of section 45I.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45I. Credit for production from a qualifying clean coal technology unit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production after the date of the enactment of this Act, in taxable years ending after such date.

Subtitle B—Incentives for Early Commercial Applications of Advanced Clean Coal Technologies

SEC. 2211. CREDIT FOR INVESTMENT IN QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

(a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating to amount of credit) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the qualifying advanced clean coal technology unit credit.''.

(b) AMOUNT OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

''SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying advanced clean coal technology unit credit for any taxable year is an amount equal to 10 percent of the applicable percentage of the qualified investment in a qualifying advanced clean coal technology unit for such taxable year.

''(b) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'qualifying advanced clean coal technology unit' means an advanced clean coal technology unit of the taxpayer—

''(A)(i)(I) in the case of a unit first placed in service after the date of the enactment of this section, the original use of which commences with the taxpayer, or

''(II) in the case of the retrofitting or repowering of a unit first placed in service before such date of enactment, the retrofitting or repowering of which is completed by the taxpayer after such date, or

''(ii) which is acquired through purchase (as defined by section 179(d)(2)),

''(B) which is depreciable under section 167,

''(C) which has a useful life of not less than 4 years,

''(D) which is located in the United States,

''(E) which is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy,

''(F) which is not a qualifying clean coal technology unit, and

''(G) which receives an allocation of a portion of the national megawatt capacity limitation under subsection (f).

''(2) SPECIAL RULE FOR SALE-LEASEBACKS.—For purposes of subparagraph (A) of paragraph (1), in the case of a unit which—

''(A) is originally placed in service by a person, and

''(B) is sold and leased back by such person, or is leased to such person, within 3 months after the date such unit was originally placed in service, for a period of not less than 12 years,

such unit shall be treated as originally placed in service not earlier than the date on which such unit is used under the leaseback (or lease) referred to in subparagraph (B). The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this subsection, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying advanced clean coal technology unit during such period.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying advanced clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (f) bears to the total megawatt capacity of such unit.

''(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of this section—

''(1) IN GENERAL.—The term 'advanced clean coal technology unit' means a new, retrofit, or repowering unit of the taxpayer which—

''(A) is—

''(i) an eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit,

''(ii) an eligible pressurized fluidized bed combustion technology unit,

''(iii) an eligible integrated gasification combined cycle technology unit, or

''(iv) an eligible other technology unit, and

''(B) meets the carbon emission rate requirements of paragraph (6).

''(2) ELIGIBLE ADVANCED PULVERIZED COAL OR ATMOSPHERIC FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit' means a clean coal technology unit using advanced pulverized coal or atmospheric fluidized bed combustion technology which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2013, and

''(B) has a design net heat rate of not more than 8,350 (8,750 in the case of units placed in service before 2009).

''(3) ELIGIBLE PRESSURIZED FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible pressurized fluidized bed combustion technology unit' means a clean coal technology unit using pressurized fluidized bed combustion technology which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2017, and

''(B) has a design net heat rate of not more than 7,720 (8,750 in the case of units placed in service before 2009, and 8,350 in the case of units placed in service after 2008 and before 2013).

''(4) ELIGIBLE INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY UNIT.—The term 'eligible integrated gasification combined cycle technology unit' means a clean coal technology unit using integrated gasification combined cycle technology, with or without fuel or chemical co-production, which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2017,

''(B) has a design net heat rate of not more than 7,720 (8,750 in the case of units placed in service before 2009, and 8,350 in the case of units placed in service after 2008 and before 2013), and

''(C) has a net thermal efficiency (HHV) using coal with fuel or chemical co-production of not less than 43.9 percent (39 percent in the case of units placed in service before 2009, and 40.9 percent in the case of units placed in service after 2008 and before 2013).

''(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—The term 'eligible other technology unit' means a clean coal technology unit using any other technology for the production of electricity which is placed in service after the date of the enactment of this section and before January 1, 2017.

''(6) CARBON EMISSION RATE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a unit meets the requirements of this paragraph if—

''(i) in the case of a unit using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate is less than 0.60 pound of carbon per kilowatt hour, and

''(ii) in the case of a unit using design coal with a heat content of more than 9,000 Btu per pound, the carbon emission rate is less than 0.54 pound of carbon per kilowatt hour.

''(B) ELIGIBLE OTHER TECHNOLOGY UNIT.—In the case of an eligible other technology unit, subparagraph (A) shall be applied by substituting '0.51' and '0.459' for '0.60' and '0.54', respectively.

''(e) GENERAL DEFINITIONS.—Any term used in this section which is also used in section 45I shall have the meaning given such term in section 45I.

''(f) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF ADVANCED CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of subsection (b)(1)(G), the national megawatt capacity limitation is—

''(A) for qualifying advanced clean coal technology units using advanced pulverized coal or atmospheric fluidized bed combustion technology, not more than 1,000 megawatts (not more than 500 megawatts in the case of units placed in service before 2009),

''(B) for such units using pressurized fluidized bed combustion technology, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009),

''(C) for such units using integrated gasification combined cycle technology, with or without fuel or chemical co-production, not more than 2,000 megawatts (not more than 1,000 megawatts in the case of units placed in service before 2009 and not more than 1,500 megawatts in the case of units placed in service after 2008 and before 2013), and

''(D) for such units using other technology for the production of electricity, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009).

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying advanced clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection and section 45J,

''(B) to limit the capacity of any qualifying advanced clean coal technology unit to which this section applies so that the combined megawatt capacity of all such units to which this section applies does not exceed 4,000 megawatts,

''(C) to provide a certification process described in section 45I(e)(3)(C),

''(D) to carry out the purposes described in subparagraphs (D), (E), and (F) of section 45I(e)(3), and

''(E) to reallocate capacity which is not allocated to any technology described in subparagraphs (A) through (D) of paragraph (1) because an insufficient number of qualifying units request an allocation for such technology, to another technology described in such subparagraphs in order to maximize the amount of energy efficient production encouraged with the available tax credits.

''(4) SELECTION CRITERIA.—For purposes of paragraph (3)(C), the selection criteria for allocating the national megawatt capacity limitation to qualifying advanced clean coal technology units—

''(A) shall be established by the Secretary of Energy as part of a competitive solicitation,

''(B) shall include primary criteria of minimum design net heat rate, maximum design thermal efficiency, environmental performance, and lowest cost to the Government, and

''(C) shall include supplemental criteria as determined appropriate by the Secretary of Energy.

''(g) QUALIFIED INVESTMENT.—For purposes of subsection (a), the term 'qualified investment' means, with respect to any taxable year, the basis of a qualifying advanced clean coal technology unit placed in service by the taxpayer during such taxable year (in the case of a unit described in subsection (b)(1)(A)(i)(II), only that portion of the basis of such unit which is properly attributable to the retrofitting or repowering of such unit).

''(h) QUALIFIED PROGRESS EXPENDITURES.—

''(1) INCREASE IN QUALIFIED INVESTMENT.—In the case of a taxpayer who has made an election under paragraph (5), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (g) without regard to this subsection) shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

''(2) PROGRESS EXPENDITURE PROPERTY DEFINED.—For purposes of this subsection, the term 'progress expenditure property' means any property being constructed by or for the taxpayer and which it is reasonable to believe will qualify as a qualifying advanced clean coal technology unit which is being constructed by or for the taxpayer when it is placed in service.

''(3) QUALIFIED PROGRESS EXPENDITURES DEFINED.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—In the case of any self-constructed property, the term 'qualified progress expenditures' means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

''(B) NONSELF-CONSTRUCTED PROPERTY.—In the case of nonself-constructed property, the term 'qualified progress expenditures' means the amount paid during the taxable year to another person for the construction of such property.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—The term 'self-constructed property' means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

''(B) NONSELF-CONSTRUCTED PROPERTY.—The term 'nonself-constructed property' means property which is not self-constructed property.

''(C) CONSTRUCTION, ETC.—The term 'construction' includes reconstruction and erection, and the term 'constructed' includes reconstructed and erected.

''(D) ONLY CONSTRUCTION OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT TO BE TAKEN INTO ACCOUNT.—Construction shall be taken into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

''(5) ELECTION.—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.

''(i) COORDINATION WITH OTHER CREDITS.—This section shall not apply to any property with respect to which the rehabilitation credit under section 47 or the energy credit under section 48 is allowed unless the taxpayer elects to waive the application of such credit to such property.''.

(c) RECAPTURE.—Section 50(a) (relating to other special rules) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULES RELATING TO QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of applying this subsection in the case of any credit allowable by reason of section 48A, the following shall apply:

''(A) GENERAL RULE.—In lieu of the amount of the increase in tax under paragraph (1), the increase in tax shall be an amount equal to the investment tax credit allowed under section 38 for all prior taxable years with respect to a qualifying advanced clean coal technology unit (as defined by section 48A(b)(1)) multiplied by a fraction whose numerator is the number of years remaining to fully depreciate under this title the qualifying advanced clean coal technology unit disposed of, and whose denominator is the total number of years over which such unit would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of the qualifying advanced clean coal technology unit shall be treated as a year of remaining depreciation.

''(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology unit under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted for the amount described in such paragraph (2).

''(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology unit.''.

(d) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(17) NO CARRYBACK OF SECTION 48A CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology unit credit determined under section 48A may be carried back to a taxable year ending on or before the date of the enactment of section 48A.''.

(e) TECHNICAL AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) the portion of the basis of any qualifying advanced clean coal technology unit attributable to any qualified investment (as defined by section 48A(g)).''.

(2) Section 50(a)(4) is amended by striking ''and (2)'' and inserting ''(2), and (6)''.

(3) Section 50(c) is amended by adding at the end the following new paragraph:

''(6) NONAPPLICATION.—Paragraphs (1) and (2) shall not apply to any qualifying advanced clean coal technology unit credit under section 48A.''.

(4) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48 the following new item:

''Sec. 48A. Qualifying advanced clean coal technology unit credit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 2212. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45J. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying advanced clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of advanced clean coal technology production credit, multiplied by

''(2) the applicable percentage (as determined under section 48A(c)) of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying advanced clean coal technology unit during the 10-year period beginning on the date the unit was originally placed in service (or returned to service after becoming a qualifying advanced clean coal technology unit).

''(b) APPLICABLE AMOUNT.—For purposes of this section, the applicable amount of advanced clean coal technology production credit with respect to production from a qualifying advanced clean coal technology unit shall be determined as follows:

''(1) Where the qualifying advanced clean coal technology unit is producing electricity only:

''(A) In the case of a unit originally placed in service before 2009, if—

''The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,400.	$.0060	$.0038
More than 8,400 but not more than 8,550.	$.0025	$.0010
More than 8,550 but less than 8,750.	$.0010	$.0010.

''(B) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770.	$.0105	$.0090
More than 7,770 but not more than 8,125.	$.0085	$.0068
More than 8,125 but less than 8,350.	$.0075	$.0055.

''(C) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380.	$.0140	$.0115
More than 7,380 but not more than 7,720.	$.0120	$.0090.

''(2) Where the qualifying advanced clean coal technology unit is producing fuel or chemicals:

''(A) In the case of a unit originally placed in service before 2009, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.6 percent.	$.0060	$.0038
Less than 40.6 but not less than 40 percent.	$.0025	$.0010
Less than 40 but not less than 39 percent.	$.0010	$.0010.

''(B) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.6 percent.	$.0105	$.0090
Less than 43.6 but not less than 42 percent.	$.0085	$.0068
Less than 42 but not less than 40.9 percent.	$.0075	$.0055.

''(C) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 44.2 percent.	$.0140	$.0115
Less than 44.2 but not less than 43.9 percent.	$.0120	$.0090.

''(c) INFLATION ADJUSTMENT.—For calendar years after 2003, each amount in paragraphs (1) and (2) of subsection (b) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) IN GENERAL.—Any term used in this section which is also used in section 45I or 48A shall have the meaning given such term in such section.

''(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 45(d) shall apply.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting '', plus'', and by adding at the end the following new paragraph:

''(21) the qualifying advanced clean coal technology production credit determined under section 45J(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(18) NO CARRYBACK OF SECTION 45J CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology production credit determined under section 45J may be carried back to a taxable year ending on or before the date of the enactment of section 45J.''.

(d) DENIAL OF DOUBLE BENEFIT.—Section 29(d) (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DOUBLE BENEFIT.—This section shall not apply with respect to any qualified fuel the production of which may be taken into account for purposes of determining the credit under section 45J.''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45J. Credit for production from a qualifying advanced clean coal technology unit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to production after the date of the enactment of this Act, in taxable years ending after such date.

Subtitle C—Treatment of Persons Not Able To Use Entire Credit

SEC. 2221. TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.

(a) IN GENERAL.—Section 45I, as added by this Act, is amended by adding at the end the following new subsection:

''(f) TREATMENT OF PERSON NOT ABLE TO USE ENTIRE CREDIT.—

''(1) ALLOWANCE OF CREDITS.—

''(A) IN GENERAL.—Any credit allowable under this section, section 45J, or section 48A with respect to a facility owned by a person described in subparagraph (B) may be transferred or used as provided in this subsection, and the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(B) PERSONS DESCRIBED.—A person is described in this subparagraph if the person is—

''(i) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(ii) an organization described in section 1381(a)(2)(C),

''(iii) a public utility (as defined in section 136(c)(2)(B)),

''(iv) any State or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any of the foregoing,

''(v) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof, or

''(vi) the Tennessee Valley Authority.

''(2) TRANSFER OF CREDIT.—

''(A) IN GENERAL.—A person described in clause (i), (ii), (iii), (iv), or (v) of paragraph (1)(B) may transfer any credit to which paragraph (1)(A) applies through an assignment to any other person not described in paragraph (1)(B). Such transfer may be revoked only with the consent of the Secretary.

''(B) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to insure that any credit described in subparagraph (A) is claimed once and not reassigned by such other person.

''(C) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in clause (iii), (iv), or (v) of paragraph (1)(B) from the transfer of any credit under subparagraph (A) shall be treated as arising from the exercise of an essential government function.

''(3) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in clause (i), (ii), or (v) of paragraph (1)(B), any credit to which paragraph (1)(A) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of this section.

''(4) USE BY TVA.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in paragraph (1)(B)(vi), any credit to which paragraph (1)(A) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

''(B) TREATMENT OF CREDITS.—The aggregate amount of credits described in paragraph (1)(A) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

''(C) CREDIT CARRYOVER.—With respect to any fiscal year, if the aggregate amount of credits described paragraph (1)(A) with respect to such person exceeds the aggregate amount of payment obligations described in subparagraph (A), the excess amount shall remain available for application as credits against the amounts of such payment obligations in succeeding fiscal years in the same manner as described in this paragraph.

''(5) CREDIT NOT INCOME.—Any transfer under paragraph (2) or use under paragraph (3) of any credit to which paragraph (1)(A) applies shall not be treated as income for purposes of section 501(c)(12).

''(6) TREATMENT OF UNRELATED PERSONS.—For purposes of this subsection, sales among and between persons described in clauses (i), (ii), (iii), (iv), and (v) of paragraph (1)(A) shall be treated as sales between unrelated parties.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to production after the date of the enactment of this Act, in taxable years ending after such date.

TITLE XXIII—OIL AND GAS PROVISIONS

SEC. 2301. OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45K. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

''(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) the qualified credit oil production and the qualified natural gas production which is attributable to the taxpayer.

''(b) CREDIT AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The credit amount is—

''(A) $3 per barrel of qualified crude oil production, and

''(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

''(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

''(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

''(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

''(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2002, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting 'calendar year 2001' for 'calendar year 1990').

''(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

''(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

''(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

''(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

''(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or natural gas which is produced from a qualified marginal well.

''(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

''(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

''(B) PROPORTIONATE REDUCTIONS.—

''(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

''(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

''(3) DEFINITIONS.—

''(A) QUALIFIED MARGINAL WELL.—The term 'qualified marginal well' means a domestic well—

''(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

''(ii) which, during the taxable year—

''(I) has average daily production of not more than 25 barrel equivalents, and

''(II) produces water at a rate not less than 95 percent of total well effluent.

''(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

''(C) BARREL EQUIVALENT.—The term 'barrel equivalent' means, with respect to natural gas, a conversation ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

''(d) OTHER RULES.—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

''(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

''(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.

''(4) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of subsection (c)(3)(A), a marginal well which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualified marginal well during such period.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting '', plus'', and by adding at the end the following new paragraph:

''(22) the marginal oil and gas well production credit determined under section 45K(a).''.

(c) NO CARRYBACK OF MARGINAL OIL AND GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE DATE.—Subsection (d) of section 39, as amended by this Act, is amended by adding at the end the following new paragraph:

''(19) NO CARRYBACK OF MARGINAL OIL AND GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the marginal oil and gas well production credit determined under section 45K may be carried back to a taxable year ending on or before the date of the enactment of section 45K.''.

(d) COORDINATION WITH SECTION 29.—Section 29(a) is amended by striking ''There'' and inserting ''At the election of the taxpayer, there''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45K. Credit for producing oil and gas from marginal wells.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after the date of the enactment of this Act.

SEC. 2302. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) any natural gas gathering line, and''.

(b) NATURAL GAS GATHERING LINE.—Subsection (i) of section 168, as amended by this Act, is amended by adding at the end the following new paragraph:

''(16) NATURAL GAS GATHERING LINE.—The term 'natural gas gathering line' means—

''(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, or

''(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

''(i) a gas processing plant,

''(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

''(iii) an interconnection with an intrastate transmission pipeline, or

''(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (C)(i) the following new item:

''(C)(ii) ..... 10''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 2303. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179C the following new section:

''SEC. 179D. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

''(a) TREATMENT AS EXPENSE.—

''(1) IN GENERAL.—A small business refiner may elect to treat any qualified capital costs as an expense which is not chargeable to capital account. Any qualified cost which is so treated shall be allowed as a deduction for the taxable year in which the cost is paid or incurred.

''(2) LIMITATION.—

''(A) IN GENERAL.—The aggregate costs which may be taken into account under this subsection for any taxable year may not exceed the applicable percentage of the qualified capital costs paid or incurred for the taxable year.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—Except as provided in clause (ii), the applicable percentage is 75 percent.

''(ii) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily refinery runs for the period described in subsection (b)(2) in excess of 155,000 barrels, the percentage described in clause (i) shall be reduced (not below zero) by the product of such percentage (before the application of this clause) and the ratio of such excess to 50,000 barrels.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CAPITAL COSTS.—The term 'qualified capital costs' means any costs which—

''(A) are otherwise chargeable to capital account, and

''(B) are paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirement of the Environmental Protection Agency, as in effect on the date of the enactment of this section, with respect to a facility placed in service by the taxpayer before such date.

''(2) SMALL BUSINESS REFINER.—The term 'small business refiner' means, with respect to any taxable year, a refiner of crude oil, which, within the refinery operations of the business, employs not more than 1,500 employees on any day during such taxable year and whose average daily refinery run for the 1-year period ending on the date of the enactment of this section did not exceed 205,000 barrels.

''(c) COORDINATION WITH OTHER PROVISIONS.—Section 280B shall not apply to amounts which are treated as expenses under this section.

''(d) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(e) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting '', or'', and by inserting after subparagraph (J) the following new subparagraph:

''(K) expenditures for which a deduction is allowed under section 179D.''.

(2) Section 263A(c)(3) is amended by inserting ''179C,'' after ''section''.

(3) Section 312(k)(3)(B), as amended by this Act, is amended by striking ''or 179C'' each place it appears in the heading and text and inserting '', 179C, or 179D''.

(4) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (33), by striking the period at the end of paragraph (34) and inserting '', and'', and by adding at the end the following new paragraph:

''(35) to the extent provided in section 179D(d).''.

(5) Section 1245(a), as amended by this Act, is amended by inserting ''179D,'' after ''179C,'' both places it appears in paragraphs (2)(C) and (3)(C).

(6) The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by inserting after section 179C the following new item:

''Sec. 179D. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 2304. ENVIRONMENTAL TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 45L. ENVIRONMENTAL TAX CREDIT.

''(a) IN GENERAL.—For purposes of section 38, the amount of the environmental tax credit determined under this section with respect to any small business refiner for any taxable year is an amount equal to 5 cents for every gallon of 15 parts per million or less sulfur diesel produced at a facility by such small business refiner during such taxable year.

''(b) MAXIMUM CREDIT.—

''(1) IN GENERAL.—For any small business refiner, the aggregate amount determined under subsection (a) for any taxable year with respect to any facility shall not exceed the applicable percentage of the qualified capital costs paid or incurred by such small business refiner with respect to such facility during the applicable period, reduced by the credit allowed under subsection (a) for any preceding year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1)—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable percentage is 25 percent.

''(B) REDUCED PERCENTAGE.—The percentage described in subparagraph (A) shall be reduced in the same manner as under section 179D(a)(2)(B)(ii).

''(c) DEFINITIONS.—For purposes of this section—

''(1) IN GENERAL.—The terms 'small business refiner' and 'qualified capital costs' have the same meaning as given in section 179D.

''(2) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any facility, the period beginning on the day after the date which is 1 year after the date of the enactment of this section and ending with the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility.

''(3) APPLICABLE EPA REGULATIONS.—The term 'applicable EPA regulations' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency, as in effect on the date of the enactment of this section.

''(d) CERTIFICATION.—

''(1) REQUIRED.—Not later than the date which is 30 months after the first day of the first taxable year in which the environmental tax credit is allowed with respect to qualified capital costs paid or incurred with respect to a facility, the small business refiner shall obtain a certification from the Secretary, in consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

''(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

''(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

''(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

''(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends, and

''(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(e) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(f) COOPERATIVE ORGANIZATIONS.—

''(1) APPORTIONMENT OF CREDIT.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) of this section, for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year. Such an election shall be irrevocable for such taxable year.

''(2) TREATMENT OF ORGANIZATIONS AND PATRONS.—

''(A) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

''(B) PATRONS.—The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (21), by striking the period at the end of paragraph (22) and inserting '', plus'', and by adding at the end the following new paragraph:

''(23) in the case of a small business refiner, the environmental tax credit determined under section 45L(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable), as amended by this Act, is amended by adding after subsection (d) the following new subsection:

''(e) ENVIRONMENTAL TAX CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45L(a).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45L. Environmental tax credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 2305. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) IN GENERAL.—Paragraph (4) of section 613A(d) (relating to certain refiners excluded) is amended to read as follows:

''(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or 1 or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 60,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 2306. MARGINAL PRODUCTION INCOME LIMIT EXTENSION.

Section 613A(c)(6)(H) (relating to temporary suspension of taxable income limit with respect to marginal production), as amended by section 607(a) of the Job Creation and Worker Assistance Act of 2002, is amended by striking ''2004'' and inserting ''2007''.

SEC. 2307. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1, as amended by this Act, is amended by adding at the end the following new section:

"SEC. 199. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR DOMESTIC OIL AND GAS WELLS.

''A taxpayer shall be entitled to an amortization deduction with respect to any geological and geophysical expenses incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) based on a period of 24 months beginning with the month in which such expenses were incurred.''.

(b) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 199. Amortization of geological and geophysical expenditures for domestic oil and gas wells.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2002.

SEC. 2308. AMORTIZATION OF DELAY RENTAL PAYMENTS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1, as amended by this Act, is amended by adding at the end the following new section:

"SEC. 199A. AMORTIZATION OF DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.

''(a) IN GENERAL.—A taxpayer shall be entitled to an amortization deduction with respect to any delay rental payments incurred in connection with the development of oil or gas within the United States (as defined in section 638) based on a period of 24 months beginning with the month in which such payments were incurred.''.

''(b) DELAY RENTAL PAYMENTS.—For purposes of this section, the term 'delay rental payment' means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.''.

(b) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 199A. Amortization of delay rental payments for domestic oil and gas wells.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.

SEC. 2309. STUDY OF COAL BED METHANE.

(a) IN GENERAL.—The Secretary of the Treasury shall study the effect of section 29 of the Internal Revenue Code of 1986 on the production of coal bed methane. Such study shall be made in conjunction with the study to be undertaken by the Secretary of the Interior on the effects of coal bed methane production on surface and water resources, as provided in section 607 of the Energy Policy Act of 2003.

(b) CONTENTS OF STUDY.—The study under subsection (a) shall estimate the total amount of credits under section 29 of the Internal Revenue Code of 1986 claimed annually and in the aggregate which are related to the production of coal bed methane since the date of the enactment of

such section 29. Such study shall report the annual value of such credits allowable for coal bed methane compared to the average annual wellhead price of natural gas (per thousand cubic feet of natural gas). Such study shall also estimate the incremental increase in production of coal bed methane that has resulted from the enactment of such section 29, and the cost to the Federal Government, in terms of the net tax benefits claimed, per thousand cubic feet of incremental coal bed methane produced annually and in the aggregate since such enactment.

SEC. 2310. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 is amended by adding at the end the following new subsection:

''(h) EXTENSION FOR OTHER FACILITIES.—

''(1) OIL AND GAS.—In the case of a well or facility for producing qualified fuels described in subparagraph (A) or (B) of subsection (c)(1) which was drilled or placed in service after the date of the enactment of this subsection and before January 1, 2005, notwithstanding subsection (f), this section shall apply with respect to such fuels produced at such well or facility not later than the close of the 3-year period beginning on the date that such well is drilled or such facility is placed in service.

''(2) FACILITIES PRODUCING REFINED COAL.—

''(A) IN GENERAL.—In the case of a facility described in subparagraph (C) for producing refined coal which was placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such facility not later than the close of the 5-year period beginning on the date such facility is placed in service.

''(B) REFINED COAL.—For purposes of this paragraph, the term 'refined coal' means a fuel which is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock.

''(C) COVERED FACILITIES.—

''(i) IN GENERAL.—A facility is described in this subparagraph if such facility produces refined coal using a technology that results in—

''(I) a qualified emission reduction, and

''(II) a qualified enhanced value.

''(ii) QUALIFIED EMISSION REDUCTION.—For purposes of this subparagraph, the term 'qualified emission reduction' means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2002.

''(iii) QUALIFIED ENHANCED VALUE.—For purposes of this subparagraph, the term 'qualified enhanced value' means an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal.

''(iv) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITIES EXCLUDED.—A facility described in this subparagraph shall not include a qualifying advanced clean coal technology facility (as defined in section 48A(b)).

''(3) WELLS PRODUCING VISCOUS OIL.—

''(A) IN GENERAL.—In the case of a well for producing viscous oil which was placed in service after the date of the enactment of this subsection and before January 1, 2005, this section shall apply with respect to fuel produced at such well not later than the close of the 3-year period beginning on the date such well is placed in service.

''(B) VISCOUS OIL.—The term ''viscous oil' means heavy oil, as defined in section 613A(c)(6), except that—

''(i) '22 degrees' shall be substituted for '20 degrees' in applying subparagraph (F) thereof, and

''(ii) in all cases, the oil gravity shall be measured from the initial well-head samples, drill cuttings, or down hole samples.

''(C) WAIVER OF UNRELATED PERSON REQUIREMENT.—In the case of viscous oil, the requirement under subsection (a)(1)(B)(i) of a sale to an unrelated person shall not apply to any sale to the extent that the viscous oil is not consumed in the immediate vicinity of the wellhead.

''(4) COALMINE METHANE GAS.—

''(A) IN GENERAL.—This section shall apply to coalmine methane gas—

''(i) captured or extracted by the taxpayer after the date of the enactment of this subsection and before January 1, 2005, and

''(ii) utilized as a fuel source or sold by or on behalf of the taxpayer to an unrelated person after the date of the enactment of this subsection and before January 1, 2005.

''(B) COALMINE METHANE GAS.—For purposes of this paragraph, the term 'coalmine methane gas' means any methane gas which is—

''(i) liberated during qualified coal mining operations, or

''(ii) extracted up to 5 years in advance of qualified coal mining operations as part of a specific plan to mine a coal deposit.

''(C) SPECIAL RULE FOR ADVANCED EXTRACTION.—In the case of coalmine methane gas which is captured in advance of qualified coal mining operations, the credit under subsection (a) shall be allowed only after the date the coal extraction occurs in the immediate area where the coalmine methane gas was removed.

''(D) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of subparagraphs (B) and (C), coal mining operations which are not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be qualified coal mining operations during such period.

''(5) FACILITIES PRODUCING FUELS FROM AGRICULTURAL AND ANIMAL WASTE.—

''(A) IN GENERAL.—In the case of facility for producing liquid, gaseous, or solid fuels from qualified agricultural and animal wastes, including such fuels when used as feedstocks, which was placed in service after the date of the enactment of this subsection and before January 1, 2005, this section shall apply with respect to fuel produced at such facility not later than the close of the 3-year period beginning on the date such facility is placed in service.

''(B) QUALIFIED AGRICULTURAL AND ANIMAL WASTE.—For purposes of this paragraph, the term 'qualified agricultural and animal waste' means agriculture and animal waste, including by-products, packaging, and any materials associated with the processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes, including wood shavings, straw, rice hulls, and other bedding for the disposition of manure.

''(6) CREDIT AMOUNT.—In determining the amount of credit allowable under this section solely by reason of this subsection, the dollar amount applicable under subsection (a)(1) shall be $3 (without regard to subsection (b)(2)).''.

(b) EXTENSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.—Paragraph (2) of section 29(f) (relating to application of section) is amended by inserting ''(January 1, 2005, in the case of any coke, coke gas, or natural gas and byproducts produced by coal gasification from lignite in a facility described in paragraph (1)(B))'' after ''January 1, 2003''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to fuel sold after the date of the enactment of this Act.

SEC. 2311. NATURAL GAS DISTRIBUTION LINES TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and by inserting '', and'', and by adding at the end the following new clause:

''(iv) any natural gas distribution line.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B), as amended by this Act, is amended by adding after the item relating to subparagraph (E)(iii) the following new item:

''(E)(iv) ..... 20''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

TITLE XXIV—ELECTRIC UTILITY RESTRUCTURING PROVISIONS

SEC. 2401. ONGOING STUDY AND REPORTS REGARDING TAX ISSUES RESULTING FROM FUTURE RESTRUCTURING DECISIONS.

(a) ONGOING STUDY.—The Secretary of the Treasury, after consultation with the Federal Energy Regulatory Commission, shall undertake an ongoing study of Federal tax issues resulting from nontax decisions on the restructuring of the electric industry. In particular, the study shall focus on the effect on tax-exempt bonding authority of public power entities and on corporate restructuring which results from the restructuring of the electric industry.

(b) REGULATORY RELIEF.—In connection with the study described in subsection (a), the Secretary of the Treasury should exercise the Secretary's authority, as appropriate, to modify or suspend regulations that may impede an electric utility company's ability to reorganize its capital stock structure to respond to a competitive marketplace.

(c) REPORTS.—The Secretary of the Treasury shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than December 31, 2002, regarding Federal tax issues identified under the study described in subsection (a), and at least annually thereafter, regarding such issues identified since the preceding report. Such reports shall also include such legislative recommendations regarding changes to the private business use rules under subpart A of part IV of subchapter B of chapter 1 of the Internal Revenue Code of 1986 as the Secretary of the Treasury deems necessary. The reports shall continue until such time as the Federal Energy Regulatory Commission has completed the restructuring of the electric industry.

SEC. 2402. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A is amended to read as follows:

''(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.''.

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Subsection (e) of section 468A is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer's interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

''(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

''(B) no amount shall be treated as distributed from such Fund, or be includible in gross income, by reason of such transfer.''.

(c) DEDUCTION FOR NUCLEAR DECOMMISSIONING COSTS WHEN PAID.—Paragraph (2) of section 468A(c) is amended to read as follows:

''(2) DEDUCTION OF NUCLEAR DECOMMISSIONING COSTS.—In addition to any deduction under subsection (a), nuclear decommissioning costs paid or incurred by the taxpayer during any taxable year shall constitute ordinary and necessary expenses in carrying on a trade or business under section 162.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 2403. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking ''or'' at the end of clause (i), by striking clause (ii), and by adding at the end the following new clauses:

''(ii) from any open access transaction (other than income received or accrued directly or indirectly from a member),

''(iii) from any nuclear decommissioning transaction,

''(iv) from any asset exchange or conversion transaction, or

''(v) from the prepayment of any loan, debt, or obligation made, insured, or guaranteed under the Rural Electrification Act of 1936.''.

(2) DEFINITIONS AND SPECIAL RULES.—Paragraph (12) of section 501(c) is amended by adding at the end the following new subparagraphs:

''(E) For purposes of subparagraph (C)(ii)—

''(i) The term 'open access transaction' means any transaction meeting the open access requirements of any of the following subclauses with respect to a mutual or cooperative electric company:

''(I) The provision or sale of transmission service or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis pursuant to an open access transmission tariff filed with and approved by FERC, including an acceptable reciprocity tariff, or under a regional transmission organization agreement approved by FERC.

''(II) The provision or sale of electric energy distribution services or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis to end-users served by distribution facilities owned by the mutual or cooperative electric company (or its members).

''(III) The delivery or sale of electric energy generated by a generation facility meets the open access requirements of this subclause only if such facility is directly connected to distribution facilities owned by the mutual or cooperative electric company (or its members) which owns the generation facility, and such distribution facilities meet the open access requirements of subclause (II).

''(ii) Clause (i)(I) shall apply in the case of a voluntarily filed tariff only if the mutual or cooperative electric company files a report with FERC within 90 days after the date of the enactment of this subparagraph relating to whether or not such company will join a regional transmission organization.

''(iii) A mutual or cooperative electric company shall be treated as meeting the open access requirements of clause (i)(I) if a regional transmission organization controls the transmission facilities.

''(iv) References to FERC in this subparagraph shall be treated as including references to the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))) or references to the Rural Utilities Service with respect to any other facility not subject to FERC jurisdiction.

''(v) For purposes of this subparagraph—

''(I) The term 'transmission facility' means an electric output facility (other than a generation facility) that operates at an electric voltage of 69 kV or greater. To the extent provided in regulations, such term includes any output facility that FERC determines is a transmission facility under standards applied by FERC under the Federal Power Act (as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003).

''(II) The term 'regional transmission organization' includes an independent system operator.

''(III) The term 'FERC' means the Federal Energy Regulatory Commission.

''(F) The term 'nuclear decommissioning transaction' means—

''(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

''(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

''(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

''(G) The term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

''(i) generating, transmitting, distributing, or selling electric energy, or

''(ii) producing, transmitting, distributing, or selling natural gas.''.

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS.—Paragraph (12) of section 501(c), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

''(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

''(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period does not exceed the load loss mitigation sales limit for such period.

''(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

''(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

''(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

''(II) the megawatt hours of electric energy sold during the base year to such members.

''(v) For purposes of clause (iv)(II), the term 'base year' means—

''(I) the calendar year preceding the start-up year, or

''(II) at the election of the electric company, the second or third calendar years preceding the start-up year.

''(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

''(vii) For purposes of this subparagraph, the start-up year is the calendar year which includes the date of the enactment of this subparagraph or, if later, at the election of the mutual or cooperative electric company—

''(I) the first year that such electric company offers nondiscriminatory open access, or

''(II) the first year in which at least 10 percent of such electric company's sales are not to members of such electric company.

''(viii) A company shall not fail to be treated as a mutual or cooperative company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

''(ix) In the case of a mutual or cooperative electric company, income from any open access transaction received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.''.

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end the following new paragraph:

''(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.''.

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

''(c) CROSS REFERENCE.—

''For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 2404. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

''(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction in any taxable year—

''(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

''(B) any income derived from such transaction in excess of such ordinary income which is required to be included in gross income for such taxable year,

shall be so recognized and included ratably over the 8-taxable year period beginning with such taxable year.

''(2) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2007, of—

''(A) property used by the taxpayer in the trade or business of providing electric transmission services, or

''(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

''(3) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means—

''(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

''(B) a person—

''(i) who the Federal Energy Regulatory Commission determines in its authorization of the

transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) is not a market participant within the meaning of such Commission's rules applicable to regional transmission organizations, and

''(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization before the close of the period specified in such authorization, but not later than the close of the period applicable under paragraph (1), or

''(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

''(4) ELECTION.—An election under paragraph (1), once made, shall be irrevocable.

''(5) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 2405. APPLICATION OF TEMPORARY REGULATIONS TO CERTAIN OUTPUT CONTRACTS.

In the application of section 1–141–7(c)(4) of the Treasury Temporary Regulations to output contracts entered into after February 22, 1998, with respect to an issuer participating in open access with respect to the issuer's transmission facilities, an output contract in existence on or before such date that is amended after such date shall be treated as a contract entered into after such date only if the amendment increases the amount of output sold under such contract by extending the term of the contract or increasing the amount of output sold, but such treatment as a contract entered into after such date shall begin on the effective date of the amendment and shall apply only with respect to the increased output to be provided under such contract.

SEC. 2406. TREATMENT OF CERTAIN DEVELOPMENT INCOME OF COOPERATIVES.

(a) IN GENERAL.—Subparagraph (C) of section 501(c)(12), as amended by this Act, is amended by striking ''or'' at the end of clause (iv), by striking the period at the end of clause (v) and insert '', or'', and by adding at the end the following new clause:

''(vi) from the receipt before January 1, 2007, of any money, property, capital, or any other contribution in aid of construction or connection charge intended to facilitate the provision of electric service for the purpose of developing qualified fuels from nonconventional sources (within the meaning of section 29).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

TITLE XXV—ADDITIONAL PROVISIONS

SEC. 2501. EXTENSION OF ACCELERATED DEPRECIATION AND WAGE CREDIT BENEFITS ON INDIAN RESERVATIONS.

(a) SPECIAL RECOVERY PERIOD FOR PROPERTY ON INDIAN RESERVATIONS.—Section 168(j)(8) (relating to termination), as amended by section 613(b) of the Job Creation and Worker Assistance Act of 2002, is amended by striking ''2004'' and inserting ''2005''.

(b) INDIAN EMPLOYMENT CREDIT.—Section 45A(f) (relating to termination), as amended by section 613(a) of the Job Creation and Worker Assistance Act of 2002, is amended by striking ''2004'' and inserting ''2005''.

SEC. 2502. STUDY OF EFFECTIVENESS OF CERTAIN PROVISIONS BY GAO.

(a) STUDY.—The Comptroller General of the United States shall undertake an ongoing analysis of—

(1) the effectiveness of the alternative motor vehicles and fuel incentives provisions under title II and the conservation and energy efficiency provisions under title III, and

(2) the recipients of the tax benefits contained in such provisions, including an identification of such recipients by income and other appropriate measurements.

Such analysis shall quantify the effectiveness of such provisions by examining and comparing the Federal Government's forgone revenue to the aggregate amount of energy actually conserved and tangible environmental benefits gained as a result of such provisions.

(b) REPORTS.—The Comptroller General of the United States shall report the analysis required under subsection (a) to Congress not later than December 31, 2002, and annually thereafter.

SEC. 2503. CREDIT FOR PRODUCTION OF ALASKA NATURAL GAS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45M. ALASKA NATURAL GAS.

''(a) IN GENERAL.—For purposes of section 38, the Alaska natural gas credit of any taxpayer for any taxable year is the credit amount per 1,000,000 Btu of Alaska natural gas entering any intake or tie-in point which was derived from an area of the State of Alaska lying north of 64 degrees North latitude, which is attributable to the taxpayer and sold by or on behalf of the taxpayer to an unrelated person during such taxable year (within the meaning of section 45).

''(b) CREDIT AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The credit amount per 1,000,000 Btu of Alaska natural gas entering any intake or tie-in point which was derived from an area of the State of Alaska lying north of 64 degrees North latitude (determined in United States dollars), is the excess of—

''(A) $3.25, over

''(B) the average monthly price at the AECO C Hub in Alberta, Canada, for Alaska natural gas for the month in which occurs the date of such entering.

''(2) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after the first calendar year ending after the date described in subsection (g)(1), the dollar amount contained in paragraph (1)(A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting 'the calendar year ending before the date described in section 45M(g)(1)' for '1990').

''(c) ALASKA NATURAL GAS.—For purposes of this section, the term 'Alaska natural gas' means natural gas entering any intake or tie-in point which was derived from an area of the State of Alaska lying north of 64 degrees North latitude produced in compliance with the applicable State and Federal pollution prevention, control, and permit requirements from the area generally known as the North Slope of Alaska (including the continental shelf thereof within the meaning of section 638(l)), determined without regard to the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(l)).

''(d) RECAPTURE.—

''(1) IN GENERAL.—With respect to each 1,000,000 Btu of Alaska natural gas entering any intake or tie-in point which was derived from an area of the State of Alaska lying north of 64 degrees North latitude after the date which is 3 years after the date described in subsection (g)(1), if the average monthly price described in subsection (b)(1)(B) exceeds 150 percent of the amount described in subsection (b)(1)(A) for the month in which occurs the date of such entering, the taxpayer's tax under this chapter for the taxable year shall be increased by an amount equal to the lesser of—

''(A) such excess, or

''(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the Alaska natural gas credit received by the taxpayer for such years had been zero.

''(2) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

''(e) APPLICATION OF RULES.—For purposes of this section, rules similar to the rules of paragraphs (3), (4), and (5) of section 45(d) shall apply.

''(f) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any fuel taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such fuel.

''(g) APPLICATION OF SECTION.—This section shall apply to Alaska natural gas entering any intake or tie-in point which was derived from an area of the State of Alaska lying north of 64 degrees North latitude for the period—

''(1) beginning with the later of—

''(A) January 1, 2010, or

''(B) the initial date for the interstate transportation of such Alaska natural gas, and

''(2) except with respect to subsection (d), ending with the date which is 15 years after the date described in paragraph (1).''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting '', plus'', and by adding at the end the following new paragraph:

''(24) The Alaska natural gas credit determined under section 45M(a).''.

(c) ALLOWING CREDIT AGAINST ENTIRE REGULAR TAX AND MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax), as amended by this Act, is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) SPECIAL RULES FOR ALASKA NATURAL GAS CREDIT.—

''(A) IN GENERAL.—In the case of the Alaska natural gas credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the Alaska natural gas credit).

''(B) ALASKA NATURAL GAS CREDIT.—For purposes of this subsection, the term 'Alaska natural gas credit' means the credit allowable under subsection (a) by reason of section 45M(a).''.

(2) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii), as amended by this Act, subclause (II) of section 38(c)(3)(A)(ii), as amended by this Act, and subclause (II) of section 38(c)(4)(A)(ii), as added by this Act, are each amended by inserting ''or the Alaska natural gas credit'' after ''producer credit''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A

of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45M. Alaska natural gas.''.

SEC. 2504. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-FREE SALES ENTERPRISES.

(a) PROHIBITION.—Section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) is amended—

(1) by redesignating paragraphs (6) through (8) as paragraphs (7) through (9), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) Any gasoline or diesel fuel sold at a duty-free sales enterprise shall be considered to be entered for consumption into the customs territory of the United States.''.

(b) CONSTRUCTION.—The amendments made by this section shall not be construed to create any inference with respect to the interpretation of any provision of law as such provision was in effect on the day before the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 2505. TREATMENT OF DAIRY PROPERTY.

(a) QUALIFIED DISPOSITION OF DAIRY PROPERTY TREATED AS INVOLUNTARY CONVERSION.—

(1) IN GENERAL.—Section 1033 (relating to involuntary conversions) is amended by designating subsection (k) as subsection (l) and inserting after subsection (j) the following new subsection:

''(k) QUALIFIED DISPOSITION TO IMPLEMENT BOVINE TUBERCULOSIS ERADICATION PROGRAM.—

''(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualified disposition:

''(A) TREATMENT AS INVOLUNTARY CONVERSION.—Such disposition shall be treated as an involuntary conversion to which this section applies.

''(B) MODIFICATION OF SIMILAR PROPERTY REQUIREMENT.—Property to be held by the taxpayer either for productive use in a trade or business or for investment shall be treated as property similar or related in service or use to the property disposed of.

''(C) EXTENSION OF PERIOD FOR REPLACING PROPERTY.—Subsection (a)(2)(B)(i) shall be applied by substituting '4 years' for '2 years'.

''(D) WAIVER OF UNRELATED PERSON REQUIREMENT.—Subsection (i) (relating to replacement property must be acquired from unrelated person in certain cases) shall not apply.

''(E) EXPANDED CAPITAL GAIN FOR CATTLE AND HORSES.—Section 1231(b)(3)(A) shall be applied by substituting '1 month' for '24 months'.

''(2) QUALIFIED DISPOSITION.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified disposition' means the disposition of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, as implemented pursuant to the Declaration of Emergency Because of Bovine Tuberculosis (65 Federal Register 63,227 (2000)).

''(B) PAYMENTS RECEIVED IN CONNECTION WITH THE BOVINE TUBERCULOSIS ERADICATION PROGRAM.—For purposes of this subsection, any amount received by a taxpayer in connection with an agreement under such bovine tuberculosis eradication program shall be treated as received in a qualified disposition.

''(C) TRANSMITTAL OF CERTIFICATIONS.—The Secretary of Agriculture shall transmit copies of certifications under this paragraph to the Secretary.

''(3) ALLOWANCE OF THE ADJUSTED BASIS OF CERTIFIED DAIRY PROPERTY AS A DEPRECIATION DEDUCTION.—The adjusted basis of any property certified under paragraph (2)(A) shall be allowed as a depreciation deduction under section 167 for the taxable year which includes the date of the certification described in paragraph (2)(A).

''(4) DAIRY PROPERTY.—For purposes of this subsection, the term 'dairy property' means all tangible or intangible property used in connection with a dairy business or a dairy processing plant.

''(5) SPECIAL RULES FOR CERTAIN BUSINESS ORGANIZATIONS.—

''(A) S CORPORATIONS.—In the case of an S corporation, gain on a qualified disposition shall not be treated as recognized for the purposes of section 1374 (relating to tax imposed on certain built-in gains).

''(B) PARTNERSHIPS.—In the case of a partnership which dissolves in anticipation of a qualified disposition (including in anticipation of receiving the amount described in paragraph (2)(B)), the dairy property owned by the partners of such partnership at the time of such disposition shall be treated, for the purposes of this section and notwithstanding any regulation or rule of law, as owned by such partners at the time of such disposition.

''(6) TERMINATION.—This subsection shall not apply to dispositions made after December 31, 2006.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to dispositions made and amounts received in taxable years ending after May 22, 2001.

(b) DEDUCTION OF QUALIFIED RECLAMATION EXPENDITURES.—

(1) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 199B. EXPENSING OF DAIRY PROPERTY RECLAMATION COSTS.

''(a) IN GENERAL.—Notwithstanding section 280B (relating to demolition of structures), a taxpayer may elect to treat any qualified reclamation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

''(b) QUALIFIED RECLAMATION EXPENDITURE.—

''(1) IN GENERAL.—For purposes of this subparagraph, the term 'qualified reclamation expenditure' means amounts otherwise chargeable to capital account and paid or incurred to convert any real property certified under section 1033(k)(2) (relating to qualified disposition) into unimproved land.

''(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY.—A rule similar to the rule of section 198(b)(2) (relating to special rule for expenditures for depreciable property) shall apply for purposes of paragraph (1).

''(c) DEDUCTION RECAPTURED AS ORDINARY INCOME.—Rules similar to the rules of section 198(e) (relating to deduction recaptured as ordinary income on sale, etc.) shall apply with respect to any qualified reclamation expenditure.

''(d) TERMINATION.—This section shall not apply to expenditures paid or incurred after December 31, 2006.''.

(2) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 199B. Expensing of dairy property reclamation costs.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to expenditures paid or incurred in taxable years ending after May 22, 2001.

SEC. 2506. CLARIFICATION OF EXCISE TAX EXEMPTIONS FOR AGRICULTURAL AERIAL APPLICATORS.

(a) NO WAIVER BY FARM OWNER, TENANT, OR OPERATOR NECESSARY.—Subparagraph (B) of section 6420(c)(4) (relating to certain farming use other than by owner, etc.) is amended to read as follows:

''(B) if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.''.

(b) EXEMPTION INCLUDES FUEL USED BETWEEN AIRFIELD AND FARM.—Section 6420(c)(4), as amended by subsection (a), is amended by adding at the end the following new flush sentence:

''For purposes of this paragraph, in the case of an aerial applicator, gasoline shall be treated as used on a farm for farming purposes if the gasoline is used for the direct flight between the airfield and 1 or more farms.''.

(c) EXEMPTION FROM TAX ON AIR TRANSPORTATION OF PERSONS FOR FORESTRY PURPOSES EXTENDED TO FIXED-WING AIRCRAFT.—Subsection (f) of section 4261 (relating to tax on air transportation of persons) is amended to read as follows:

''(f) EXEMPTION FOR CERTAIN USES.—No tax shall be imposed under subsection (a) or (b) on air transportation—

''(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

''(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel use or air transportation after December 31, 2001, and before January 1, 2003.

SEC. 2507. MODIFICATION OF RURAL AIRPORT DEFINITION.

(a) IN GENERAL.—Clause (ii) of section 4261(e)(1)(B) (defining rural airport) is amended by striking the period at the end of subclause (II) and inserting '', or'' and by adding at the end the following new subclause:

''(III) is not connected by paved roads to another airport.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2002.

SEC. 2508. EXEMPTION FROM TICKET TAXES FOR TRANSPORTATION PROVIDED BY SEAPLANES.

(a) IN GENERAL.—The taxes imposed by sections 4261 and 4271 shall not apply to transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2002.

DIVISION I—IRAQ OIL IMPORT RESTRICTION

TITLE XXVI—IRAQ OIL IMPORT RESTRICTION

SEC. 2601. SHORT TITLE AND FINDINGS.

(a) SHORT TITLE.—This title can be cited as the ''Iraq Petroleum Import Restriction Act of 2003''.

(b) FINDINGS.—Congress finds that—

(1) the Government of the Republic of Iraq—

(A) has failed to comply with the terms of United Nations Security Council Resolution 687 regarding unconditional Iraqi acceptance of the destruction, removal, or rendering harmless, under international supervision, of all nuclear,

chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities, as well as all ballistic missiles with a range greater than 150 kilometers and related major parts, and repair and production facilities and has failed to allow United Nations inspectors access to sites used for the production or storage of weapons of mass destruction;

(B) routinely contravenes the terms and. conditions of UNSC Resolution 661, authorizing the export of petroleum products from Iraq in exchange for food, medicine and other humanitarian products by conducting a routine and extensive program to sell such products outside of the channels established by UNSC Resolution 661 in exchange for military equipment and materials to be used in pursuit of its program to develop weapons of mass destruction in order to threaten the United States and its allies in the Persian Gulf and surrounding regions;

(C) has failed to adequately draw down upon the amounts received in the Escrow Account established by UNSC Resolution 986 to purchase food, medicine and other humanitarian products required by its citizens, resulting in massive humanitarian suffering by the Iraqi people;

(D) conducts a periodic and systematic campaign to harass and obstruct the enforcement of the United States- and United Kingdom-enforced ''No-Fly Zones'' in effect in the Republic of Iraq;

(E) routinely manipulates the petroleum export production volumes permitted under UNSC Resolution 661 in order to create uncertainty in global energy markets, and therefore threatens the economic security of the United States;

(F) pays bounties to the families of suicide bombers in order to encourage the murder of Israeli civilians;

(2) further imports of petroleum products from the Republic of Iraq are inconsistent with the national security and foreign policy interests of the United States and should be eliminated until such time as they are not so inconsistent.

SEC. 2602. PROHIBITION ON IRAQI-ORIGIN PETROLEUM IMPORTS.

The direct or indirect import from Iraq of Iraqi-origin petroleum and petroleum products is prohibited, notwithstanding an authorization by the Committee established by UNSC Resolution 661 or its designee, or any other order to the contrary.

SEC. 2603. TERMINATION/PRESIDENTIAL CERTIFICATION.

This title will remain in effect until such time as the President, after consultation with the relevant committees in Congress, certifies to the Congress that—

(1) Iraq is in substantial compliance with the terms of—

(A) UNSC Resolution 687; and

(B) UNSC Resolution 986 prohibiting smuggling of oil in circumvention of the ''Oil-for-Food'' program; and

(2) ceases the practice of compensating the families of suicide bombers in order to encourage the murder of Israeli citizens; or that

(3) resuming the importation of Iraqi-origin petroleum and petroleum products would not be inconsistent with the national security and foreign policy interests of the United States.

SEC. 2604. HUMANITARIAN INTERESTS.

It is the sense of the Senate that the President should make all appropriate efforts to ensure that the humanitarian needs of the Iraqi people are not negatively affected by this Act, and should encourage through public, private, domestic and international means the direct or indirect sale, donation or other transfer to appropriate nongovernmental health and humanitarian organizations and individuals within Iraq of food, medicine and other humanitarian products.

SEC. 2605. DEFINITIONS.

(a) 661 COMMITTEE.—The term 661 Committee means the Security Council Committee established by UNSC Resolution 661, and persons acting for or on behalf of the Committee under its specific delegation of authority for the relevant matter or category of activity, including the overseers appointed by the United Nations Secretary-General to examine and approve agreements for purchases of petroleum and petroleum products from the Government of Iraq pursuant to UNSC Resolution 986.

(b) UNSC RESOLUTION 661.—The term UNSC Resolution 661 means United Nations Security Council Resolution No. 661, adopted August 6, 1990, prohibiting certain transactions with respect to Iraq and Kuwait.

(c) UNSC RESOLUTION 687.—The term UNSC Resolution 687 means United Nations Security Council Resolution 687, adopted April 3, 1991.

(d) UNSC RESOLUTION 986.—The term UNSC Resolution 986 means United Nations Security Council Resolution 986, adopted April 14, 1995.

SEC. 2606. EFFECTIVE DATE.

The prohibition on importation of Iraqi-origin petroleum and petroleum products shall be effective 30 days after enactment of this Act.

DIVISION J—MISCELLANEOUS

TITLE XXVII—MISCELLANEOUS PROVISION

SEC. 2701. FAIR TREATMENT OF PRESIDENTIAL JUDICIAL NOMINEES.

It is the sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee should along with its other legislative and oversight responsibilities, continue to hold regular hearings on judicial nominees and should, in accordance with the precedents and practices of the Committee, schedule hearings on the nominees submitted by the President on May 9, 2001, and resubmitted on September 5, 2001, expeditiously.

Attest:

Secretary.

SA 1538. Mr. SUNUNU (for Mr. ROBERTS (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill H.R. 2417, to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Retirement and Disability System, and for other purposes; as follows:

On page 14, strike line 4 and all that follows through page 15, line 23.

On page 16, line 6, insert '', in coordination with the Secretary of Defense,'' after ''shall''.

On page 18, line 17, strike ''and the Secretary of Defense shall jointly submit'' and insert ''shall, in coordination with the Secretary of Defense, submit''.

On page 22, between lines 8 and 9, insert the following:

SEC. 317. BUDGET TREATMENT OF COSTS OF ACQUISITION OF MAJOR SYSTEMS BY THE INTELLIGENCE COMMUNITY.

(a) FINDINGS.—Congress makes the following findings:

(1) Funds within the National Foreign Intelligence Program often must be shifted from program to program and from fiscal year to fiscal year to address funding shortfalls caused by significant increases in the costs of acquisition of major systems by the intelligence community.

(2) While some increases in the costs of acquisition of major systems by the intelligence community are unavoidable, the magnitude of growth in the costs of acquisition of many major systems indicates a systemic bias within the intelligence community to underestimate the costs of such acquisition, particularly in the preliminary stages of development and production.

(3) Decisions by Congress to fund the acquisition of major systems by the intelligence community rely significantly upon initial estimates of the affordability of acquiring such major systems and occur within a context in which funds can be allocated for a variety of alternative programs. Thus, substantial increases in costs of acquisition of major systems place significant burdens on the availability of funds for other programs and new proposals within the National Foreign Intelligence Program.

(4) Independent cost estimates, prepared by independent offices, have historically represented a more accurate projection of the costs of acquisition of major systems.

(5) Recognizing the benefits associated with independent cost estimates for the acquisition of major systems, the Secretary of Defense has built upon the statutory requirement in section 2434 of title 10, United States Code, to develop and consider independent cost estimates for the acquisition of such systems by mandating the use of such estimates in budget requests of the Department of Defense.

(6) The mandatory use throughout the intelligence community of independent cost estimates for the acquisition of major systems will assist the President and Congress in the development and funding of budgets which more accurately reflect the requirements and priorities of the United States Government for intelligence and intelligence-related activities.

(b) BUDGET TREATMENT OF COSTS OF ACQUISITION OF MAJOR SYSTEMS.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by inserting after section 506 the following new section:

''BUDGET TREATMENT OF COSTS OF ACQUISITION OF MAJOR SYSTEMS BY THE INTELLIGENCE COMMUNITY

''SEC. 506A. (a) INDEPENDENT COST ESTIMATES.—(1) The Director of Central Intelligence shall, in consultation with the head of each element of the intelligence community concerned, prepare an independent cost estimate of the full life-cycle cost of development, procurement, and operation of each major system to be acquired by the intelligence community.

''(2) Each independent cost estimate for a major system shall, to the maximum extent practicable, specify the amount required to be appropriated and obligated to develop, procure, and operate the major system in each fiscal year of the proposed period of development, procurement, and operation of the major system.

''(3)(A) In the case of a program of the intelligence community that qualifies as a major system, an independent cost estimate shall be prepared before the submission to Congress of the budget of the President for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of such major system.

''(B) In the case of a program of the intelligence community for which an independent cost estimate was not previously required to be prepared under this section, including a program for which development or procurement commenced before the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2004, if the aggregate future costs of development or procurement (or any combination of such activities) of the program will exceed $500,000,000 (in current fiscal year dollars), the program shall qualify as a major system for purposes of this section, and an independent cost estimate for such major system shall be prepared before the submission to Congress of the budget of the President for the first fiscal year thereafter in which appropriated funds are

anticipated to be obligated for such major system.

''(4) The independent cost estimate for a major system shall be updated upon—

''(A) the completion of any preliminary design review associated with the major system;

''(B) any significant modification to the anticipated design of the major system; or

''(C) any change in circumstances that renders the current independent cost estimate for the major system inaccurate.

''(5) Any update of an independent cost estimate for a major system under paragraph (4) shall meet all requirements for independent cost estimates under this section, and shall be treated as the most current independent cost estimate for the major system until further updated under that paragraph.

''(b) PREPARATION OF INDEPENDENT COST ESTIMATES.—(1) The Director shall establish within the Office of the Deputy Director of Central Intelligence for Community Management an office which shall be responsible for preparing independent cost estimates, and any updates thereof, under subsection (a), unless a designation is made under paragraph (2).

''(2) In the case of the acquisition of a major system for an element of the intelligence community within the Department of Defense, the Director and the Secretary of Defense shall provide that the independent cost estimate, and any updates thereof, under subsection (a) be prepared by an entity jointly designated by the Director and the Secretary in accordance with section 2434(b)(1)(A) of title 10, United States Code.

''(c) UTILIZATION IN BUDGETS OF PRESIDENT.—If the budget of the President requests appropriations for any fiscal year for the development or procurement of a major system by the intelligence community, the President shall request in such budget an amount of appropriations for the development or procurement, as the case may be, of the major system that is equivalent to the amount of appropriations identified in the most current independent cost estimate for the major system for obligation for each fiscal year for which appropriations are requested for the major system in such budget.

''(d) INCLUSION OF ESTIMATES IN BUDGET JUSTIFICATION MATERIALS.—The budget justification materials submitted to Congress in support of the budget of the President shall include the most current independent cost estimate under this section for each major system for which appropriations are requested in such budget for any fiscal year.

''(e) DEFINITIONS.—In this section:

''(1) The term 'budget of the President' means the budget of the President for a fiscal year as submitted to Congress under section 1105(a) of title 31, United States Code.

''(2) The term 'independent cost estimate' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with the acquisition of a major system, which shall be based on programmatic and technical specifications provided by the office within the element of the intelligence community with primary responsibility for the development, procurement, or operation of the major system.

''(3) The term 'major system' means any significant program of an element of the intelligence community with projected total development and procurement costs exceeding $500,000,000 (in current fiscal year dollars), which costs shall include all end-to-end program costs, including costs associated with the development and procurement of the program and any other costs associated with the development and procurement of systems required to support or utilize the program.''.

(c) CLERICAL AMENDMENT.—The table of contents for the National Security Act of 1947 is amended by inserting after the item relating to section 506 the following new item:

''Sec. 506A. Budget treatment of costs of acquisition of major systems by the intelligence community.''.

On page 27, beginning on line 23, strike ''The heads of the elements of the intelligence community shall jointly submit'' and insert ''The Director of Central Intelligence shall, in consultation with the heads of the elements of the intelligence community, submit''.

On page 31, strike lines 15 through 20 and insert the following:

(1) the Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Select Committee on Homeland Security, and the Committees on Armed Services and the Judiciary of the House of Representatives.

On page 35, line 21, insert after ''shall'' the following: '', after such consultation with the Secretary of State and the Attorney General as the Director considers appropriate,''.

On page 36, strike line 23 and all that follows through page 37, line 3, and insert the following:

(1) the Select Committee on Intelligence and the Committees on Armed Services and Foreign Relations of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committees on Armed Services and International Relations of the House of Representatives.

On page 37, strike line 24 and all that follows through page 38, line 5.

On page 38, strike lines 9 and 10 and insert the following:

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

On page 39, strike lines 7 through 12.

On page 40, strike lines 14 through 16 and insert the following:

(iii) in subparagraph (G), as so redesignated, by striking ''section 114(c)'' and inserting ''section 114(b)''.

On page 40, strike lines 18 through 25 and insert the following:

(i) in subparagraph (A), by striking ''section 114(b)'' and inserting ''section 114(a)'';

(ii) in subparagraph (B), by striking ''section 114(d)'' and inserting ''section 114(c)'';

(iii) by striking subparagraphs (C), (E), and (F); and

(iv) by redesignating subparagraphs (D) and (G) as subparagraphs (C) and (D), respectively; and

On page 41, strike lines 2 through 5 and insert the following:

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (8) as paragraphs (1) through (7), respectively.

On page 41, between lines 16 and 17, insert the following:

SEC. 340. REPORT ON OPERATIONS OF DIRECTORATE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION AND TERRORIST THREAT INTEGRATION CENTER.

(a) REPORT REQUIRED.—The Secretary of Homeland Security shall submit to the appropriate committees of Congress a report on the operations of the Directorate of Information Analysis and Infrastructure Protection of the Department of Homeland Security and the Terrorist Threat Integration Center. The report shall include the following:

(1) An assessment of the operations of the Directorate, including the capability of the Directorate—

(A) to meet personnel requirements, including requirements to employ qualified analysts, and the status of efforts to employ qualified analysts;

(B) to share intelligence information with the other elements of the intelligence community, including the sharing of intelligence information through secure information technology connections between the Directorate and the other elements of the intelligence community;

(C) to disseminate intelligence information, or analyses of intelligence information, to other departments and agencies of the Federal Government and, as appropriate, to State and local governments;

(D) to coordinate with State and local counterterrorism and law enforcement officials;

(E) to access information, including intelligence and law enforcement information, from the departments and agencies of the Federal Government, including the ability to access, in a timely and efficient manner, all information authorized by section 202 of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 122); and

(F) to fulfill, given the current assets and capabilities of the Directorate, the responsibilities set forth in section 201 of the Homeland Security Act of 2002 (6 U.S.C. 121);

(2) A delineation of the responsibilities and duties of the Directorate and of the responsibilities and duties of the Center.

(3) A delineation and summary of the areas in which the responsibilities and duties of the Directorate and the Center overlap.

(4) An assessment of whether the areas of overlap, if any, delineated under paragraph (3) represent an inefficient utilization of the limited resources of the Directorate and the intelligence community.

(5) Such information as the Secretary, in coordination with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, considers appropriate to explain the basis for the establishment and operation of the Center as a ''joint venture'' of participating agencies rather than as an element of the Directorate reporting directly to the Secretary through the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection.

(b) SUBMITTAL DATE.—The report required by this section shall be submitted not later than May 1, 2004.

(c) FORM.—The report required by this section shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committees on Governmental Affairs, the Judiciary, and Appropriations of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Select Committee on Homeland Security, and the Committees on the Judiciary and Appropriations of the House of Representatives.

On page 49, strike line 25 and all that follows through page 50, line 1, and insert the following:

1949.—(1) Section 5(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(1)) is amended by striking ''(c)(6)'' each place it appears and inserting ''(c)(7)''.

(2) Section 6 of that Act (50 U.S.C. 403g) is amended by striking

On page 52, between lines 12 and 13, insert the following:

SEC. 357. TREATMENT OF CLASSIFIED INFORMATION IN MONEY LAUNDERING CASES.

Section 5318A of title 31, United States Code, is amended by adding at the end the following:

''(f) CLASSIFIED INFORMATION.—In any judicial review of a finding of the existence of a primary money laundering concern, or of the requirement for 1 or more special measures with respect to a primary money laundering concern, made under this section, if the designation or imposition, or both, were based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.), such information may be submitted by the Secretary to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review of any finding made or required under this section.''.

On page 55, between lines 2 and 3, insert the following:

SEC. 405. CONTRIBUTION BY CENTRAL INTELLIGENCE AGENCY EMPLOYEES OF CERTAIN BONUS PAY TO THRIFT SAVINGS PLAN ACCOUNTS.

(a) CSRS PARTICIPANTS.—Section 8351(d) of title 5, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following new paragraph:

''(2)(A) An employee of the Central Intelligence Agency making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2403; 50 U.S.C. 403–4 note).

''(B) Contributions under this paragraph are subject to section 8432(d) of this title.''.

(b) FERS PARTICIPANTS.—Section 8432 of title 5, United States Code, is amended by adding at the end the following new subsection:

''(k)(1) An employee of the Central Intelligence Agency making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2403; 50 U.S.C. 403–4 note).

''(2) Contributions under this subsection are subject to subsection (d).

''(3) For purposes of subsection (c), basic pay of an employee of the Central Intelligence Agency shall include bonus pay received by the employee as part of the pilot project referred to in paragraph (1).''.

On page 74, after line 5, add the following:

SEC. 503. USE OF FUNDS FOR COUNTERDRUG AND COUNTERTERRORISM ACTIVITIES FOR COLOMBIA.

(a) AUTHORITY.—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities for fiscal year 2004 or 2005, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall be available—

(1) to support a unified campaign against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)); and

(2) to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.

(b) TERMINATION OF AUTHORITY.—The authority provided in subsection (a) shall cease to be effective if the Secretary of Defense has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(c) APPLICATION OF CERTAIN PROVISIONS OF LAW.—Sections 556, 567, and 568 of Public Law 107–115, section 8093 of the Department of Defense Appropriations Act, 2002, and the numerical limitations on the number of United States military personnel and United States individual civilian contractors in section 3204(b)(1) of Public Law 106–246 shall be applicable to funds made available pursuant to the authority contained in subsection (a).

(d) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self defense or rescuing any United States citizen to include United States Armed Forces personnel, United States civilian employees, and civilian contractors employed by the United States.

SEC. 504. SCENE VISUALIZATION TECHNOLOGIES.

Of the amount authorized to be appropriated by this Act, $2,500,000 shall be available for the National Imagery and Mapping Agency (NIMA) for scene visualization technologies.

SA 1539. Mr. SUNUNU (for Mr. HATCH) proposed an amendment to the concurrent resolution S. Con. Res. 25, recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month,'' and for other purposes; as follows:

Strike all after the resolving clause and insert the following:

That Congress—

(1) recognizes the 350th anniversary of the American Jewish community;

(2) supports the designation of an ''American Jewish History Month''; and

(3) urges all Americans to share in this commemoration so as to have a greater appreciation of the role the American Jewish community has had in helping to defend and further the liberties and freedom of all Americans.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Thursday, September 4, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of this hearing is to receive testimony on the Department of Energy polygraph program.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510–6150.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Tuesday, September 9, at 10 a.m., in 366 Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to consider the nomination of Suedeen G. Kelly to be a Member of the Federal of Energy Regulatory Commission and Rick A. Dearborn to be Assistant Secretary of Energy, Congressional and Intergovernmental Affairs.

For further information, please contact Judy Pensabene of Committee staff at (202) 224–1327.

COMMITTEE ON ARMED SERVICES

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, July 31, 2003, at 9:30 a.m., in closed session, to receive a briefing on the work of the Iraq survey group.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on July 31, 2003, at 9:30 a.m. to conduct a markup of S. 627, the Internet Gambling Prohibition Bill, and H.R. 659, The Hospital Mortgage Insurance Act of 2003.

After the markup, the Committee will meet in open session to conduct a hearing on ''Addressing Measures To Enhance the Operation of the Fair Credit Reporting Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, July 31, 2003, at 9:30 a.m., on pending committee business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 31, 2003, at 3 p.m., to hold a subcommittee hearing on corruption in North Korea's economy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, July 31,

2003, at 10 a.m., for a hearing titled ''Terrorism Financing: Origination, Organization, and Prevention.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on solutions to the problem of health care transmission of HIV/AIDS in Africa during the session of the Senate on Thursday, July 31, 2003, at 10 a.m., in SD–430.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, July 31, 2003, at 10:30 a.m. in Dirksen Room 226.

Agenda

I. Nominations

Steven M. Colloton to be United States Circuit Judge for the Eighth Circuit; P. Kevin Castel to be United States District Judge for the Southern District of New York; Sandra J. Feuerstein to be United States District Judge for the Eastern District of New York; Richard J. Holwell to be United States District Judge for the Southern District of New York; R. David Proctor to be United States District Judge for the Northern District of Alabama; Stephen C. Robinson to be United States District Judge for the Southern District of New York; Rene Alexander Acosta to be Assistant Attorney General, Civil Rights Division, United States Department of Justice; Daniel J. Bryant to be Assistant Attorney General, Office of Legal Policy, United States Department of Justice; and Paul Michael Warner to be United States Attorney for the District of Utah.

II. Bills

S.J. Res. 1, A joint resolution proposing an amendment to the constitution of the United States to protect the rights of crime victims [Kyl, Chambliss, Cornyn, Craig, DeWine, Feinstein, Graham, Grassley].

S. 1177, Prevent All Cigarette Trafficking Act [Hatch, Grassley, Kohl].

S. 1451, Runaway, Homeless, and Missing Children Protection Act [Hatch, Leahy].

S. Res. 30, A resolution expressing the sense of the Senate that the President should designate the week beginning September 14, 2003, as ''National Historically Black Colleges and Universities Week'' [Graham].

S. Con. Res. 25, A concurrent resolution recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month,'' and for other purposes [Voinovich, Chambliss, DeWine, Feingold, Schumer, Sessions, Specter].

S. 204, National Veterans Awareness Week [Biden, Chambliss, Hatch, DeWine, Durbin, Feingold, Grassley, Kennedy, Kohl, Leahy, Sessions,].

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, July 31, 2003, at 2:30 p.m., to hold a closed hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Thu7rday, July 31, 2003, at 2 p.m., in the Dirksen Senate Office building Room 226 on ''Department of Justice Oversight: Funding Forensics Sciences—DNA and Beyond.''

Witness List

Panel I: Sarah Hart, Director, National Institute of Justice, U.S. Department of Justice, Washington, DC.

Panel II: Ms. Susan Hart Johns, President, American Society of Crime Lab Directors, Springfield, IL; Dr. Michael Baden, Co-Director, Medicolegal Investigative Unit, New York State Police, New York, NY; Randy Hillman, Esq., Executive Director, Alabama District Attorneys Association, Montgomery, AL; Frank Clark, Esq., District Attorney, Erie County, Buffalo, NY; Peter Neufeld, Esq., Co-Director, Innocence Project, Benjamin N. Cardozo School of Law, New York, NY; and Ms. Rosemary Serra, Victim, New Haven, CT.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON COMMUNICATIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Subcommittee on Communications be authorized to meet on Thursday, July 31, 2003, at 2:30 p.m. on the Internet Corporation of Assigned Names and Numbers (ICANN).

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. CORNYN. Mr. President, I ask unanimous consent that Ken Ende, a fellow with Senator MURKOWSKI's office, be granted the privilege of the floor for the duration of the consideration of the Energy bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Maryland.

SUPPLEMENTAL APPROPRIATIONS

Ms. MIKULSKI. Mr. President, in a few minutes the Senate will consider the supplemental. I wish to say a few words about the issue around AmeriCorps and other issues within the supplemental. The hour is late, so I will be brief.

The outcome is preordained, but I wish to say the fight will go on. This urgent supplemental does not meet the compelling human needs of the United States of America. The supplemental the Senate is about to pass will replenish the urgent need that FEMA has at only 50 percent of what the Federal Emergency Management Agency needs to be ready for the hurricane season. They need about $1.6 billion, and there is about $900 million included.

The supplemental also will not include money for wildfires ravaging the West. It will not include the funds to complete the NASA investigation of what went wrong on Columbia, so NASA will have to forage for funds within their agency. It will not include additional money for AmeriCorps.

I have been waiting and willing to compromise to get the emergency funding for AmeriCorps. I was willing to compromise to save the school-based programs that start in September. I knew I could not save the AmeriCorps ship because of the penny-pinching attitude of the House towards AmeriCorps.

I want to be clear that although the House left town with a take-it-or-leave-it attitude and we had to swallow it, the needs of our community will not go away. The fight will not go away, and I will continue in September to fight for the full funding for AmeriCorps, both in an emergency supplemental and even in the way of the Budget Act, if I have to, in order to get the help for AmeriCorps.

AmeriCorps, because of the clumsy and inept headquarters, overenrolled 20,000 volunteers, but we should not punish those volunteers because of the people at headquarters.

In my home State, Maryland will lose 400 volunteers. Let me tell you what they are: In rural western Maryland, an AmeriCorps program called Star, in which 34 volunteers participate. They serve 6,000 people, meeting the needs of the mountain counties of: Allegany, Garrett, and Washington.

Do you know what they do? They tutor children, they help children to read, and they help them get ready for school. Without these 34 volunteers, over 6,500 people will lose the help they need.

In Baltimore City there are 50 Jump Start volunteers. These are AmeriCorps volunteers who work in Head Start to make sure the kids get a head start. And they also recruit other volunteers. That means, again, there will be over 400 preschoolers who will not get the help they need.

I could go on in these school-based programs. Nationally, 2,700 volunteers, ready to go to work for Teach America, will not be able to go and start in September because we are leaving town without AmeriCorps funding.

I thank Senator STEVENS for trying to help on this program. He understood

the needs we had. He worked very hard with me. I regret we had a take-it-or-leave-it with the House.

Also in Baltimore, we have 40 Notre Dame volunteers.

These 40 Notre Dame volunteers help 1,842 elementary school children. They work in Baltimore schools tutoring children and providing after-school activities to help kids learn and keep them out of trouble.

Notre Dame is a success story of a faith-based organization making a difference for our communities. But without additional AmeriCorps funding, Baltimore will lose 40 Notre Dame volunteers. And 1,842 children in Baltimore will not be tutored or mentored. These are some examples in Maryland. But communities all around the country will be hurt because the House leadership would not approve emergency funding for AmeriCorps.

How did we get here? The leadership of the House of Representatives has blocked adequate emergency funding for FEMA disaster relief, fighting wildfires, the NASA *Columbia* investigation, and AmeriCorps.

The Senate acted quickly on the President's supplemental request.

The Senate approved $1.55 billion for FEMA, $253 million to fight wildfires, $50 million for the NASA *Columbia* investigation, and $100 million for AmeriCorps. But the House sent us a supplemental that is totally inadequate. There is only $984 million for FEMA.

At the last minute before recess the House supplemental did not include funding for fighting wildfires, the NASA *Columbia* investigation, or AmeriCorps. Then, the House left town for the month of August.

In April this year, the Chairman and Ranking Member of the Homeland Security Subcommittee became very concerned about a shortfall of FEMA disaster relief funding. Senators COCHRAN and BYRD asked President Bush to request emergency funding for FEMA disaster relief. But the President didn't request funding until July 7. When he did, the Senate acted quickly.

We passed it within 4 days. The President asked for $1.55 billion and we approved it, But the House only wants to give FEMA $984 million, only 60 percent of what the President says is needed.

We have never let FEMA's Disaster Relief account fall to such a low level. Right now, FEMA only has $89 million to respond to disasters. It is irresponsible to shortchange FEMA when we are at the height of hurricane season.

The House bill also eliminates funding to help Western states fight wildfires. The President requested $253 million and the Senate approved it.

But the House provided nothing. Right now, there are 42 major fires burning in 12 Western states consuming over 400,000 acres. The Forest Service is $420 million short of what they need to fight these fires, but the House didn't provide any funding.

The House also eliminates funds to complete the investigation into the loss of the Space Shuttle *Columbia*. The President requested $50 million. The Senate approved it. This funding is to keep our promises to the families of the 7 astronauts killed that we will find out what went wrong and we will fly again. Without the $50 million NASA will have to borrow from other programs in order to finish the investigation.

The House supplemental does not include funding to save 20,000 AmeriCorps volunteers. I offered the amendment to add $100 million for AmeriCorps to this urgent supplemental. With bipartisan support of Senators BOND, STEVENS, BYRD and many others, the AmeriCorps funding was voted on by the full Senate and was sustained by an overwhelming 71 to 21 votes. But the House refused to follow the usual and customary process to resolve differences. The House didn't want to face the Senate in conference.

Because a small minority of House members want to scuttle the $100 million for AmeriCorps even though an overwhelming majority of the Senate supports it, a majority of the House supports it, and 43 Governors support it.

I want to give my sincerest thanks to my colleagues in the Senate who supported emergency funding for AmeriCorps. I appreciate it and so do our volunteers and the communities they serve.

How did the AmeriCorps shortfall happen? There was a bureaucratic boondoggle. AmeriCorps overenrolled 20,000 volunteers.

Every year, the VA–HUD subcommittee funds 50,000 AmeriCorps volunteers but AmeriCorps enrolled 70,000.

How did we know about it? Senator BOND chaired the subcommittee leading the fight for reform in fiscal responsibility and uncovered the mismanagement at our April 10 hearing.

We started GAO and IG investigations. Senator BOND called for a new Chief Financial Officer. I called for new leadership. And we wrote a bipartisan bill to fix the accounting and mismanagement problems.

Our bill passed the Congress in 2 days and was signed into law.

So while the House puts out press releases about how they want to punish volunteers and communities they serve, the Senate puts out performance.

This is an emergency today. The law says funding for volunteers and the awards that help pay off their student debt must be in the Federal checkbook when the volunteers begin their service. Without emergency funding AmeriCorps can't sign up volunteers now to start in school-based programs in September.

Teach America, for example, will lose education awards for 2,700 volunteers who are going to start teaching in September.

We cannot wait until October for fiscal year 2004 and I won't wait until October.

I will continue to fight in September for AmeriCorps.

The President has called for a new spirit of voluntarism.

Young people have responded, but the House leadership wants to squander volunteer opportunities to punish volunteers and communities because of a bureaucratic boondoggle.

Mr. President, it is regrettable that the House leadership won't resolve differences in the usual and customary way. But I will continue to fight for our communities that need disaster assistance and depend on help from volunteers.

The needs won't go away and I will continue the fight in September.

I want to reiterate that the need continues. Because the need continues, the fight will go on. I promise every AmeriCorps volunteer, every community that is dependent on those volunteers, and every member of the American family looking to those volunteers, I am going to fight for them and I will stand up for them. I am going to turn to the Senate and say let's not take what the House says when they give it a take-it-or-leave-it stamp.

I yield the floor.

AMERICORPS

Mr. HARKIN. Mr. President, I am appalled at the House's refusal to provide needed emergency supplemental funding to AmeriCorps.

There was an editorial in the Wall Street Journal yesterday describing their rationale for the House position. The WSJ says, ''the concept of federally subsidized volunteerism strikes us as something the country can't afford '' and ''if Congress lacks the nerve to kill AmeriCorps, then we're glad it at least won't throw good money after bad.''

The Wall Street Journal can say that this is something the country can't afford. But I know differently. AmeriCorps is something the country can't afford to do without.

I will be the first to say that the administration's mismanagement of funds is disappointing to say the least. It is further upsetting that they are unwilling to put up the money it takes to keep those mistakes from hurting the volunteers.

I am also disappointed that the President promised to promote and grow the program, but is unwilling to put up the money to do so. It is really unfair for the President and the House to talk out of both sides of their mouths, supporting volunteerism, but then refusing to pay the comparatively small cost involved in keeping volunteerism afloat.

But this is not a problem with AmeriCorps volunteers, or with the communities they serve. Senators MIKULSKI and BOND in the ''Strengthen AmeriCorps Act'' are doing the things that need to be done to prevent future financial discrepancies.

These funding cuts don't punish those who are guilty for the problems.

These cuts punish volunteers, and communities, and the beneficiaries of the volunteers' work.

In Iowa, AmeriCorps volunteers have improved 30,000 acres of wildlife habitat. They work to improve water quality, they restore prairie land, they prevent soil erosion, they fix trails, they provide interpretive centers, and they work with communities to teach people to do these things year-round on their own.

AmeriCorps volunteers give presentations on disaster preparedness. In Dubuque, Iowa, 13 year old Korey Monahan took one of those classes. She went home, and helped her family develop a plan in case of a fire. Around midnight on April 1, their house did catch fire. But Korey, her mother Kristy, and her four brothers and sisters survived that fire because they had a solid plan. Korey won a national award from the American Red Cross for her outstanding preparedness.

In Davenport, IA, vandalism and crime in city parks have been reduced sharply in just two months, as AmeriCorps members have begun patrols through a Park Ambassador program. AmeriCorps members provide a welcoming presence and act as ''eyes and ears'' for local law enforcement. They walk through parks, and provide a welcoming presence. They connect with nearby neighborhood watch groups to recruit volunteers to join them in helping keep the parks safe and clean.

The REACH, Rural Education and Community Help, AmeriCorps program provides assistance to battered women and children in rural Iowa and minority communities where services for victims of domestic violence are minimal or non-existent. REACH members also provide programs in schools, including conflict resolution, sexual harassment, diversity and dating violence.

During the 2001–2002 program year, members made 5,994 victim contacts. Members also provided court accompaniment to battered women as they navigate the legal system. In both 2001 and 2002, members provided legal advocacy at over 600 court hearings.

The original goal was to ensure that no battered women would need to drive more than thirty miles to receive services. They are well on their way to making that dream a reality. Four stand-alone offices are now open. They have secured other sources of funding and have hired full-time staff. In addition, members have opened offices in sixteen counties and provide additional coverage to surrounding communities. Before AmeriCorps, roughly a third of Iowa's 99 counties had services, now only four in Iowa are without a victim outreach program.

Apparently, helping people like Korey Monahan to save her family from fire, repairing our environment, reducing crime, and assisting battered women is ''throwing good money after bad.'' that's not what I call ''bad money,'' and I am glad that Congress saw fit to appropriate it. I will do all I can to see that we continue to spend ''good money'' for great purposes.

THE AMTRAK BOARD OF DIRECTORS

Mr. HOLLINGS. The Amtrak board of directors is a seven-member body charged with making important corporate decisions for the National Passenger Rail Corporation. The board members are appointed by the President, and they each bring with them a certain background or expertise that benefits the National Passenger Rail Corporation and its executives.

Mrs. HUTCHISON. The most recent Amtrak board was comprised of governors, mayors and corporate executives, each of whom brought a unique perspective. A geographically diverse board is crucial to establishing a national rail system. I was very pleased when President Bush appointed David Laney of Texas to the board last year. Earlier this month, Mr. Laney was selected by his fellow board members to serve as chairman.

Mr. CARPER. As a former member of the Amtrak board and Governor of Delaware, I personally understand the important role that board members play in leading the corporation and I want to thank my colleague for recognizing the special skills that governors bring to such a position. The board's strong leadership establishes a clear direction for the corporation and provides proper oversight and accountability. Without this clear direction, investors and customers can quickly lose confidence in the company and its ability to preform and grow. The current board of management has done an excellent job of maintaining a solid and predictable course through particularly uneasy times.

Mr. HOLLINGS. The board members have a formidable responsibility to make sound decisions and investments that will successfully serve both the corporation and the Nation's rail passengers. At this critical juncture, when Amtrak is poised for either salvation or bankruptcy, the work of the board must be allowed to continue uninterrupted.

Mr. LAUTENBERG. I fully agree with your concern that the Amtrak board of directors must continue to function even while the board is in the process of being restaffed. Terms of two of the board members, specifically Governor Dukakis and Mayor Smith, expired on June 25. I understand that the terms of two other board members, Ms. Rosen and Governor Holton, will expire on September 24. If no new board members are appointed before September 24, the board will be reduced from seven members to only three members.

Mr. HOLLINGS. Yes, by September 24, the Amtrak board will lose its quorum and its ability to function unless it uses other avenues available under the law to continue its important role. That is why I am pleased to learn that the board is already exploring measures that can be taken under the corporate laws of the District of Columbia to continue to operate as a board even while it cannot achieve a quorum of members.

Mr. LOTT. It is good to know that there are other legal avenues that can be followed so that the duties of the Amtrak board are not suspended indefinitely while candidates are nominated, vetted, and confirmed by Congress. As we all know, Presidential appointments can often be a long and arduous process. However, its my hope that the Commerce Committee and the Senate will consider the confirmation of Amtrak board members as promptly as possible once we have received candidates from the President. Of course, I would like to acknowledge the work of Mayor Smith of Meridian, MS. He agreed to offer his knowledge and experience to the board, and has served for years as chairman of Amtrak's board of directors. I am grateful for his dedication to Amtrak and the excellent work he did for the railroad during his term. It is most important that the White House provide names of candidates for the board as quickly as possible so that we can begin moving through the confirmation process and return the Amtrak board to its full composition.

Mr. LAUTENBERG. I am concerned that after September 24, there will be no one on the board from the Northeast corridor, which represents over half of Amtrak's ridership as well as the primary infrastructure owned by the corporation. The board needs to have qualified people who are knowledgeable about the complex operations of the Northeast corridor and its critical importance to the entire region.

Mr. CARPER. The Senator from Mississippi's comments about the importance of receiving candidates soon is very true and I hope that the Bush administration will promptly follow the normal procedures of appointments, with the advice and consent of the Senate. The members of the Amtrak board are tasked with leading our national passenger railroad, with stewardship over substantial Federal resources and the responsibility of ensuring that the needs of the corporation and the traveling public are met. A stable and competent board is critical for so many reasons. Now is not the time for the kind of uncertainty that would clearly come from an partially staffed or incapacitated board as my colleagues have mentioned. As vacancies occur on the Amtrak board, the Bush administration has two critically important obligations that they must meet to ensure that Amtrak has a chance to survive and prosper. First, they must allow the Senate to fulfill its constitutional role of reviewing nominees so that we have the most qualified and capable people for this important job. Second, while that process is underway, they must ensure that a strong, fully functional board remains in place to provide the direction and stability Amtrak needs.

Mr. STEVENS. Mr. President, this emergency supplemental would provide an additional $983.6 million for disaster

relief and emergency assistance. It is estimated that the disaster relief fund will exhaust its current funding by the end of July 2003 in part due to higher-than-expected costs for disaster relief, including funding for tornadoes and winter storms. These additional resources are needed to continue to provide necessary emergency assistance.

With respect to the firefighting funds requested by the President, I am pleased to announce that we have an agreement with the administration on funds to continue our battle against fires, particularly in the West and Alaska. The administration has informed me it remains committed to the President's request for emergency supplemental appropriations for disaster relief and recovery efforts. Their commitment to continue to pursue enactment of the full request when we return in September is paramount to the challenges we face.

I ask unanimous consent that the Transfer Strategy statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the REOCRD, as follows:

TRANSFER STRATEGY

As of July 28, the Forest Service has obligated $304 million for fire suppression, leaving $48 million in remaining balances in the suppression account. Based on this information, the Forest Service will need to transfer between $147 million and $235 million of unobligated available funds from other accounts to pay for fire suppression.

The Administration remains committed to the President's July 7, 2003, request for emergency supplemental appropriations for disaster relief and recovery efforts and will continue to pursue enactment of the full request when Congress returns in September.

The following table illustrates how the Forest Service would likely transfer funds from other accounts to cover the anticipated cost.

Account	Transfers to reach $195 M	Transfers to reach $283 M
Preparedness	30	30
Fuels Reduction	10	10
Land Acquisition	38	65
Capital Improvement and Maintenance	11	21
Working Capital Fund		20
National Forest System	40	40
State and Private Forestry*	10	34
Research and Development	8	15
Total	$147	$235

*Includes Forest Legacy Program.

Mr. BYRD. Mr. President, the Senate now takes up a fiscal year 2003 supplemental appropriations bill in the amount of $983.6 million to replenish the Federal emergency disaster relief fund in the Department of Homeland Security.

These funds are urgently needed. In April of this year, Senator COCHRAN, chairman of the Homeland Security Appropriations Subcommittee, and I, as the ranking member, urged the administration to release funds that the President was holding up and also urged the administration to request necessary funds to shore up a looming shortfall. Now we are told that the disaster relief fund has a balance of $89 million and is expected to be completely exhausted by August 8.

The President finally sent up an emergency supplemental request on July 7 for $1.55 billion to assist recovery efforts in West Virginia and over 300 other areas in every State of the Nation that had been hard hit by severe rains, floods, and tornadoes. It took the Senate Appropriations Committee, under the leadership of Senator TED STEVENS, only 2 days to report out the necessary $1.55 billion in supplemental funds for disaster relief. That legislation also included $253 million for fighting 42 major wildfires which have consumed over 400,000 acres in 12 Western States, as well as $50 million for unanticipated costs associated with the recovery and investigation of the Space Shuttle *Columbia* accident—all requested by the President.

That legislation also included $100 million for the AmeriCorps program in order to avoid deep cuts in the number of volunteers at a time when the President has proposed to increase the number of volunteers by 50 percent.

Only 2 days later, on July 11, this legislation cleared the Senate floor by a vote of 85 to 7, and conferees on behalf of the Senate were appointed. During Senate debate, the $100 million for AmeriCorps was voted on separately and was sustained by an overwhelming 71-to-21 vote.

Now here we are almost 3 weeks later. The House Members have gone home for an August recess. Just before they left, they sent over to the Senate a $983.6 million stand-alone supplemental for disaster relief only without the necessary funds for fighting the wildfires in 12 Western States, nor the funds for the Columbia Shuttle investigation, nor the necessary funds for AmeriCorps. According to the latest Department estimates, this funding level for disaster relief isn't even enough to make it to September 30. The House sent to the Senate this stripped-down, stand-alone supplemental for disaster relief on a take-it-or-leave-it basis.

This is no way to legislate. The chairman of the Appropriations Committee knows that I am not blaming him. He has been trying energetically to engage the House to accept the necessary funds for fighting wildfires, for the NASA shuttle investigation, and for the AmeriCorps shortfall. However, the House leadership and its allies in the White House have turned a deaf ear to needs of the firefighters in the Western States, the requirements of the NASA investigation, and the 20,000 AmeriCorps volunteers who are expecting to embark on a program of working in schools teaching our children reading and math, providing care to our senior citizens, cleaning up our parks, and other valuable volunteer services to our communities.

All of these funds are urgently needed, and none are more urgently needed than the funding for disaster relief.

I am advised that, because of the lateness of the administration's request, FEMA has already stopped making payments to States for $400 million of infrastructure repairs in the 300 communities with outstanding natural disasters. Communities have already been forced to put projects for repairing damage from past disasters on hold.

In my State of West Virginia, for example, I am told that payments for projects have not been made since February of this year almost 6 months ago. West Virginia is owed over $10 million in disaster relief fund payments. Of this amount, $7 million is owed for payments for repairs to dams, sewers, and public buildings, and $3 million is owed to reimburse the State of West Virginia for hazard mitigation, including acquisition and demolition of properties in floodplains and for relocating structures.

In McDowell County, WV, for example, FEMA owes $1.1 million to help McDowell County to acquire 64 structures that were substantially damaged or demolished in the June 2002 flood.

In the town of Welch, WV, FEMA owes $250,000 for a sewer project already completed by the contractor. The town is unable to pay the contractor for the work, which could result in a lawsuit.

A similar situation obtains in the city of Bradshaw, where the work has been completed to prevent raw sewage from being dumped into a river. In this case, an amount of $50,000 is owed to the contractor.

The West Virginia Conservation Agency, a State agency responsible for cleaning blockages forming in streams, dams, and reservoirs to avoid further flooding and damage, is owed $200,000 by FEMA. The State agency has an annual budget of $500,000 and FEMA's delay has caused the agency's balances to drop to near zero. As a consequence, should there be another flood in West Virginia, the State conservation agency would not be able to perform its work.

These problems exist all across the country. We cannot wait any longer. We must approve this urgent legislation. However, because of the intransigence of the other body, we will be acting, regrettably, without providing the necessary funds for fighting wildfires, for investigating the Space Shuttle *Columbia* accident, or for the shortfall in the AmeriCorps program.

Once again, the President has failed to follow through on his promises. This legislation is $566 million below the administration's budget request for disaster relief. It is $50 million less than the administration budget request for NASA. It is $289 million less than the administration's budget request for fighting wildfires. It includes no funds for the shortfall in AmeriCorps—a program the administration claims it supports.

By its failure to engage the House leadership in support of these funds, the President's silence speaks volumes. It is the same old administration theme of rhetoric without resources.

Mr. COCHRAN. Mr. President, it is imperative that the Senate act on this measure now. The Department of Homeland Security's Emergency Preparedness and Response disaster relief fund has been depleted to a dangerously low level. This is due to nearly $300 million in unexpected expenses related to the Shuttle *Columbia* disaster recovery effort, and another $200 million because of the tornadoes and floods that have affected many States this year.

On July 7, 2003, the President submitted an emergency supplemental request to Congress totaling $1.9 billion.

Emergency supplemental appropriations fully funding the President's request are included in the Senate-passed fiscal year 2004 Legislative Branch Appropriations Act. However, the House approved for the Department of Homeland Security's Emergency Preparedness and Response disaster relief fund only $983.6 million. Not only does this bill not meet the needs of wildland fire management and NASA, but it does not include all that is needed in the Emergency Preparedness and Response disaster relief fund. The House bill is not sufficient to meet the needs for disaster relief outlined by the President in his request.

I received from my state's Emergency Management Agency a specific request that illustrates why this supplemental is needed now. I ask unanimous consent that a copy of the letter from Robert Latham, Jr. be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MISSISSIPPI EMERGENCY
MANAGEMENT AGENCY,
Jackson, MS, July 30, 2003.

Senator THAD COCHRAN,
Chairman, U.S. Senate Appropriations Subcommittee, Dirkson Senate Office Building, Washington, DC.

DEAR SENATOR COCHRAN: The shortage of funds in the federal disaster relief account is placing serious financial hardships on the communities in our state. The State of Mississippi has experienced 8 presidential disasters in 2½ years. As a result 79 of our 82 counties have been declared disaster areas by the President during this short period of time. Because of 2 previous open disasters, Mississippi now has 10 open disasters.

Currently the federal obligation for Public Assistance under these open disasters is over $31.5 million. These funds are critical to the rebuilding of critical infrastructure such as public buildings, roads, bridges, and schools in our cities and counties. In addition to this, we currently have in excess of $5 million in submitted projects designed to mitigate the effects of future disasters on our communities. We also have over $7 million in mitigation projects awaiting submission pending the availability of funds in the federal disaster relief account.

The State of Mississippi and its communities continue to incur a tremendous amount of disaster related costs that must be reimbursed in accordance with the FEMA-State Agreement. Adequate funding of the federal disaster relief account is critical to rebuilding our communities and providing the services that our citizens expect and deserve. The federal government has a professional and moral responsibility to fulfill its financial obligation to assist the state and its communities in this recovery process.

I appreciate your assistance in this matter and urge you to encourage Congress to move quickly on this issue. As always, please do not hesitate to contact me if I can be of any assistance to you or your staff.

Sincerely,

ROBERT R. LATHAM, Jr.,
Executive Director.

Mrs. CLINTON. Mr. President, last Friday, on July 25, just as it was preparing to leave town and recess, the House of Representatives sent to the Senate an emergency supplemental appropriations bill that fails to meet the needs that have been outlined by the President and by the majority of Members of the House and the Senate. I rise to express my profound disappointment with the House leadership for their action. It put the Senate in the objectionable position of having to adopt or reject the House version because any effort to amend that bill would delay urgently needed disaster aid.

The House-passed bill includes only $984 million for disaster emergency spending, even though the President requested $1.55 billion for disaster relief and emergency assistance. These funds are needed to cover the unexpected costs of the winter storms, as well as tornadoes and hurricanes which are affecting Texas and other southern States. Just last week we saw the streets of Denver flooded so high, cars were floating in the streets.

The House bill also leaves out $289 million to fight fires in the West even though this is proving to be one of the driest seasons on record. At this time there are 45 large fires burning in the West, a total of almost 400,000 acres of active wildfires. If they continue to rage, these fires will take more lives—five were lost in the last week alone—and ruin homes and even communities. How are these communities, which are experiencing the worst fiscal crisis in a generation, to cover these costs without any Federal assistance?

The House bill also neglects to provide $50 million for the National Aeronautics and Space Administration to cover unanticipated costs associated with the Shuttle *Columbia* accident and to allow NASA to begin to implement measures recommended by the Columbia Accident Investigation Board. The President requested these funds and I agree that we should provide them. When the *Columbia* space shuttle accident occurred, it devastated our Nation, reminding us that we cannot become complacent about space travel. Let us at least learn from this accident and ensure that it never happens again by implementing the recommendations of the accident board.

Of most concern to me and to the New Yorkers I represent, the House bill fails to include $100 million for AmeriCorps—emergency spending that the Senate passed overwhelmingly by a vote of 71 to 21 July 11. This funding is not only supported by the vast majority of Senators, it is also strongly supported by the majority of House Members. Two hundred and thirty four Representatives from both sides of the aisle signed letters to the President requesting additional funds for AmeriCorps.

In addition to Members of Congress, the Governors have weighed in to support AmeriCorps. Forty-four Governors including Governor Bush from Florida, Governor Taft from Ohio, and Governor Pataki from my home State of New York sent a letter to the President and Congress asking us to provide additional funding for AmeriCorps.

Over 145 U.S. mayors, including the mayors of Los Angeles, Chicago, Boston, San Diego, and New York, have sent letters in support of additional funding for AmeriCorps. One hundred and ninety college and university presidents have signed a letter in support of additional funding for AmeriCorps.

Two hundred and fifty business and philanthropic leaders took out full-page ads in the New York Times and the Financial Times asking the President to request $200 million in additional AmeriCorps funding.

One thousand eleven hundred and eight community-based programs that relay on AmeriCorps to meet their community's vital needs have also sent a letter to Congress about their support for this funding and I ask unanimous consent to print that letter into the Record now as well.

Seventy-one editorials have appeared in newspapers from coast to coast endorsing the additional funds for AmeriCorps and calling on Congress to act to prevent programs from being forced to close and prevent thousands of young people from being denied the opportunity to serve.

So how do we account for this outpouring of support?

Mr. President, I submit that it is for the simple reason that AmeriCorps works. For the price of a small grant towards higher education and a small living stipend, AmeriCorps volunteers transform communities. They fill vital gaps that otherwise would go unfilled and in the process, they make the future brighter for themselves and so many others in our society.

Sister Mary Johnice, who runs a shelter in Buffalo, described the impact AmeriCorps has had on her organization at a recent event, ''AmeriCorps forms a team of workers, hard workers, who make a difference in other people's lives. They are selfless, outstanding and sacrificial, never counting the cost of what they do and whom they serve.'' She went on to describe how Buffalo has come to count on AmeriCorps members during difficult times. ''Everyone knows when snow hits the City of Buffalo, although it's a beautiful sight, the city can be paralyzed,'' said Sister Johnice. ''I worked with AmeriCorps to pack thousands of food bags, and deliver heavy packages of food to the homebound. I saw

AmeriCorps workers walk miles for a prescription a new mother needed after having a baby. I looked at workers shoveling snow for hours so emergency vehicles could move. And I witnessed faith and love in action . . . lives touching lives! Isn't that what life is all about?'' she asked.

Quincy Calimese, a young man from the Bronx said that AmeriCorps has changed his life. ''I was waking up at two o'clock every day,'' he said. ''I had nothing to do but run the streets and be the baddest person on the block, meanwhile getting others to do the same. Now I'm asleep by ten o'clock and up every morning at seven o'clock. I'm not running the streets and I try to motivate others to do the right thing, especially the younger kids. Mostly now I'm focused on my future as an architect and staying out of trouble. I spend a lot of time in the house, and now I'm reading, something I used to think was boring. I like how simple my life has become. No more worries, no more watching my back everywhere I go.''

If the $100 million are not approved, programs like the ones Sister Johnice runs and the one Quincy Calimese participates in will be devastated.

National programs with proven records of success like CityYear, Teach for America, and Jumpstart will lose more than half of their sites. Jumpstart, which today serves 3,500 children, including 900 in New York, will probably have to close every one of its New York sites. This poster shows the progress of a shy little boy who, through the help of Jumpstart members, is now about to write his name. He is on the path to a successful future thanks to AmeriCorps.

President Bush himself said of this program, ''I want you to know, America can be saved one person at a time. You see, this great society of ours can be changed one heart, one soul, one conscience at a time. And these six heroic students, people who have said, listen, serving something greater than myself in life is an important part of being a citizen, have been a part of what's called Jumpstart.'' I believe that he meant those words when he spoke them. And I agree with him. So, how can we stand by and watch as Jumpstart loses 60 percent of its Corps members?

AmeriCorps is also integral to reducing the achievement gap between students living in high-poverty communities and their better off peers. Teach for America is an AmeriCorps program that recruits extremely talented and bright college graduates to teach in America's neediest schools. Last year 16,000 college seniors with average GPAs of 3.5 and average SATs of 1,300 applied to teach. Only 1,700 of them were selected. The majority of these students stay in education, devoting their careers to improving educational outcomes for low-income students. I am proud that the largest Teach for America corps in the country is in New York City. But I am deeply concerned about the number who will choose not to join the program after they learn that their education awards will not be forthcoming.

Mr. President, this is not a partisan issue. When I organized a letter in support of providing $3 million for Teach for America in April, 9 Republicans and 10 Democrats signed on. This program has strong bipartisan support. So, why will only 16 percent of Teach for America members receive education awards this year?

How did all of these programs, which have such overwhelming support, get to the point where they need an additional $100 million or they will go out of business?

Well, we have to look at the history. Yes, there was mismanagement by Corporation officials. The inspector general's report revealed that for a long time the Corporation was enrolling more volunteers than it had the resources in the trust to support.

But Congress has not helped the situation. In 2000 and 2001, believing that the Corporation was being overly prudent in the way it was managing the trust, Congress rescinded a total of $111.2 million. And in 2002, Congress appropriated nothing for the trust, leaving it to rely on the interest it was accruing from previously appropriated funds. At the time, it seemed like the right thing to do. And an independent analysis from KPMG LLP confirmed that the National Service Trust was solvent. How could Congress have foreseen the tragic events of September 11 and the President's Call to Service for every American?

Nevertheless, they occurred. And the response to the President's call was overwhelming. Twenty-five percent more volunteers enrolled in AmeriCorps in the year after he made his announcement.

Should we not have rescinded the funds from the trust? Probably. Should we have appropriated more for the trust in 2002? Yes. Should the President have acted sooner to ensure that the Corporation was allocating the correct number of volunteers, based on the resources it had at its disposal? Yes, I believe so. Should Corporation officials have been less accommodating to Americans who rose to meet the President's call to service? I suppose so.

But here we are today. And we have to act in the best interest of our Nation.

I believe we should reward the thousands of young people who signed up to serve their communities. They are not at fault for the misjudgment of the Corporation officials. Yet they are the ones who will be punished if we take the House's lead here today.

President Bush proposed to increase AmeriCorps by 50 percent. Instead it is about to be cut by 60 percent. This is not what the President claims to want. It is not what the majority of the Senate wants. It is not what the majority of the House wants. It is not what most Governors want. It is not what most mayors want. It is not what most community leaders want. And it is not what most business leaders want.

I know we can do better for AmeriCorps, which has been such a lifesaver for so many communities across New York and America.

Today is a tragic day for AmeriCorps. It is a day when we are giving pink slips to 20,000 dedicated Americans who want to serve their communities. We are telling them that their service is no longer needed. I hope that we can find a way to do better by AmeriCorps when we return in September.

Mr. NELSON of Florida. Mr. President, I am proud to live in a country where so many citizens volunteer their time to serve their Nation. The United States has always had a strong tradition of volunteerism.

And my pride is bolstered by a surge in participation at volunteer organizations—including AmeriCorps—since the September 11 terrorist attacks.

Our Nation depends on such volunteer organizations to provide crucial community services. For example, AmeriCorps enlists the help of our Nation's youth to tutor and mentor children, build affordable housing, teach computer skills, clean parks and streams, run afterschool programs and help respond to disasters in communities that wouldn't otherwise have such services.

At a time when our Nation's youth are turning out in record numbers to volunteer and our communities are facing budget crises, you would think that Congress would make funding for our national service programs a high priority. But it has done the opposite.

Before they left town last week, the Republican-controlled House rebuffed attempts to provide $10 million for the program. As a result, AmeriCorps will drop 20,000 of its 50,000 volunteer slots this year.

This dramatic downsizing during these tough economic times will deprive communities of needed help, and young volunteers of a small stipend they need to pay for college or student loans.

We know the program has a history of mismanagement—and those problems are being fixed. In fact, the President this month announced an overhaul of the agency's management.

But the mistakes of a few at the top shouldn't jeopardize the opportunities for young volunteers or the communities that rely on the services they provide.

There is no questioning the essential role AmeriCorps plays in helping communities and promoting volunteerism in America. In order for volunteers to make the greatest possible impact on society, we must continue our support for this and other national service programs.

I hope when we return in September, we can provide AmeriCorps the support it needs to put our Nation's eager recruits to work in communities that depend on their help.

MAKING EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2000

Mr. SUNUNU. Mr. President, I ask unanimous consent the Senate immediately proceed to H.R. 2859, the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Reserving the right to object.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. I ask unanimous consent that the acting majority leader modify his request to include an amendment which provides $20 million for air marshal training, $289 million for the emergency firefighting and wildfire suppression, $100 million for AmeriCorps, $50 million for the Space Shuttle Columbia accident, the remaining $567 million for FEMA, which is not part of the House-passed bill.

This is the supplemental which passed in the Senate, except for the $20 million for air marshal training which has now been recognized as a need of great import, especially within the last few weeks.

I ask unanimous consent that the request made by the distinguished Senator from New Hampshire be modified.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, while I very much appreciate what the minority leader is attempting to do in his concern for funding in these areas, I object to his request at this time.

The PRESIDING OFFICER. Agreement is not reached. Objection is heard.

Mr. SUNUNU. Mr. President, I have a pending unanimous consent request that the Senate proceed to H.R. 2859, the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill (H.R. 2859) was read the third time and passed.

NOMINATIONS IN STATUS QUO

Mr. SUNUNU. As in executive session I ask, notwithstanding paragraph 6 of rule 3, all nominations stand in status quo during the upcoming adjournment.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR AND NOMINATIONS DISCHARGED

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider en bloc the following nominations on today's Executive Calendar: Calendar Nos. 17, 18, 175, 242, 250, 297, 311, 317, 318, 319, 320, 322 through 340, 341, and 342, and all nominations on the Secretary's desk.

Further, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of the following nominations: PN 789, Donald Steinberg; PN 805, Constance Morella; and PN 820, George Walker.

I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed as follows:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Stanley C. Suboleski, of Virginia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2006.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

W. Scott Railton, of Virginia, to be a Member of the Occupational Safety and Health Review Commission for a term expiring April 27, 2007.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mary Lucille Jordan, of Maryland, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2008. (Reappointment)

DEPARTMENT OF TRANSPORTATION

Annette Sandberg, of Washington, to be Administrator of the Federal Motor Carrier Safety Administration, resigned.

DEPARTMENT OF JUSTICE

Diane M. Stuart, of Utah, to be Director of the Violence Against Women Office, Department of Justice. (New Position)

Karen P. Tandy, of Virginia, to be Administrator of Drug Enforcement.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Eric S. Dreiband, of Virginia, to be General Counsel of the Equal Employment Opportunity Commission for a term of four years.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Michael Young, of Pennsylvania, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2008.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Thomasina V. Rogers, of Maryland, to be a Member of the Occupational Safety and Health Review Commission for a term expiring April 27, 2009. (Reappointment)

DEPARTMENT OF DEFENSE

Lawrence Mohr, Jr., of South Carolina, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2009.

AIR FORCE

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brigadier General Kenneth M. DeCuir, 9876
Brigadier General Bob D. Dulaney, 3361
Brigadier General Robert J. Elder, Jr., 7484
Brigadier General Paul J. Fletcher, 5438
Brigadier General Douglas M. Fraser, 7505
Brigadier General William M. Fraser, III, 9314
Brigadier General Stanley Gorenc, 8279
Brigadier General Elizabeth A. Harrell, 1522
Brigadier General William F. Hodgkins, 0138
Brigadier General Raymond E. Johns, Jr., 3483
Brigadier General Timothy C. Jones, 7733
Brigadier General Frank G. Klotz, 6089
Brigadier General Robert H. Latiff, 2190
Brigadier General Richard B.H. Lewis, 1265
Brigadier General Henry A. Obering, III, 3819
Brigadier General Michael W. Peterson, 5177
Brigadier General Teresa M. Peterson, 1094
Brigadier General Gregory H. Power, 4129
Brigadier General Robert L. Smolen, 7953
Brigadier General Mark A. Volcheff, 3790

The following named officer for appointment as the Vice Chief of Staff, United States Air Force, and appointment to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C. sections 8034 and 601:

To be general

Lt. Gen. Teed M. Moseley, 1516

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be general

Gen. Gregory S. Martin, 6337

The following named United States Air Force officer for reappointment as the Chairman of the Joint Chiefs of Staff and appointment to the grade indicated while assigned to a position of importance and responsibility under title 10 U.S.C., sections 601 and 152:

To be general

Gen. Richard B. Myers, 7092

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10 U.S.C., section 601:

To be lieutenant general

Maj. Gen. Roger A. Brady, 6581

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10 U.S.C., section 601:

To be lieutenant general

Lt. Gen. Richard E. Brown, III, 8999

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Steven R. Polk, 6022

ARMY

The following named officer for appointment as the Chief of Staff, United States Army, and appointment to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., sections 688, 601 and 3033:

To be general

Gen. Peter J. Schoomaker (Retired), 3788

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be general

Lt. Gen. Bryan D. Brown, 2565

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Charles S. Rodeheaver, 9932

The following named officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. David T. Zabecki, 9488

MARINE CORPS

The following named Marine Corps officer for reappointment as the Vice Chairman of the Joint Chiefs of Staff and appointment to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601 and 154:

To be general

Gen. Peter Pace, 7426

The following named officer for appointment in the United States Marine Corps to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Robert M. Shea, 3652

NAVY

The following named officers for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral

Rear Adm. (lh) Robert T. Nolan, 6456
Read Adm. (lh) Robert O. Passmore, 0129

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Kirland H. Donald, 3953

The following named officer for appointment as Chief of Chaplains, United States Navy, and appointment to the grade indicated under title 10, U.S.C., section 5142:

To be rear admiral

Rear Adm. (lh) Louis V. Iasiello, 7632

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. (Select) Eric T. Olson, 6412

The following named officer for appointment in the United States Navy to grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Gary Roughead, 6126

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Vice Adm. James C. Dawson, Jr., 7743

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Rodney P. Rempt, 5464

EXECUTIVE OFFICE OF THE PRESIDENT

Joel David Kaplan, of Massachusetts, to be Deputy Director of the Office of Management and Budget, vice Nancy Dorn.

DEPARTMENT OF HOMELAND SECURITY

Joe D. Whitley, of Georgia, to be General Counsel, Department of Homeland Security. (New Position)

NOMINATIONS PLACED ON THE SECRETARY'S DESK

AIR FORCE

PN803 Air Force nomination of Patrice L. Pye, which was received by the Senate and appeared in the Congressional Record of July 8, 2003

PN804 Air Force nomination of * Rebekah F. Friday, which was received by the Senate and appeared in the Congressional Record of July 8, 2003

PN829 Air Force nomination of Dennis Hutson, which was received by the Senate and appeared in the Congressional Record of July 22, 2003

ARMY

PN761 Army nominations (2) beginning WILLIAM R. GLADBACH, and ending MALCOLM K. WALLACE, JR., which nominations were received by the Senate and appeared in the Congressional Record of June 19, 2003

PN783 Army nomination of Regina M. Curtis, which was received by the Senate and appeared in the Congressional Record of June 26, 2003

PN784 nomination of Nancy M. Prickett, which was received by the Senate and appeared in the Congressional Record of June 26, 2003

PN785 Army nominations (2) beginning STEPHEN J. DEMSKI, and ending JOSEPH F. MARANTO, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2003

PN786 Army nominations (2) beginning ANDREW S. KANTNER, and ending DANIEL A. TANABE, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 2003

PN794 Army nominations (7) beginning DAVID A. ARCHER, and ending DEBRA A. SPEAR, which nominations were received by the Senate and appeared in the Congressional Record of July 7, 2003

PN795 Army nominations (32) beginning NATHAN E. BAKER, and ending FREDERICK V. WRIGHT, which nominations were received by the Senate and appeared in the Congressional Record of July 7, 2003

PN796 Army nominations (22) beginning LISA M. * ANDERSON, and ending JAMES W. * TURONIS, which nominations were received by the Senate and appeared in the Congressional Record of July 7, 2003

PN797 Army nominations (135) beginning BRETT T. ACKERMAN, and ending MICHAEL J. * ZAPOR, which nominations were received by the Senate and appeared in the Congressional Record of July 7, 2003

PN798 Army nominations (283) beginning ADIO ABDU, and ending RICARDO M. YOUNG, which nominations were received by the Senate and appeared in the Congressional Record of July 7, 2003

PN799 Army nominations (39) beginning DAVID A. BARR, and ending SAMUEL R. YOUNG, which nominations were received by the Senate and appeared in the Congressional Record of July 7, 2003

PN830 Army nominations (3) beginning WILFREDO A. COLONMARTINES, and ending JEFFERY L. LEWIS, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2003

PN831 Army nominations (2) beginning THOMAS B. HOWE, and ending MICHAEL J. VEASEY, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2003.

PN832 Army nominations (4) beginning JAMES G. LYNCH, and ending RAFAEL A. ROLDAN, which nominations were received by the Senate and appeared in the Congressional Record of July 22, 2003

PN833 Army nomination of Evan L. Williams II, which was received by the Senate and appeared in the Congressional Record of July 22, 2003

MARINE CORPS

PN834 Marine Corps nomination of Thomas D. Gore, which was received by the Senate and appeared in the Congressional Record of July 22, 2003

PN835 Marine Corps nomination of Adam L. Musoff, which was received by the Senate and appeared in the Congressional Record of July 22, 2003

PN836 Marine Corps nomination of Jason K. Fettig, which was received by the Senate and appeared in the Congressional Record of July 22, 2003

PN768 Navy nominations (18) beginning CHAD F ACEY, and ending FRANK A SHAUL, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN769 Navy nominations (48) beginning CONRADO K ALEJO, and ending CARL B. WEICKSEL, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN770 Navy nominations (19) beginning BARBARA M. BURGETT, and ending ROBERT C WEITZMAN, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN771 Navy nominations (23) beginning ROBERT J ALLEN, and ending HAROLD E. WILLIAMS, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN772 Navy nominations (15) beginning ERIC J BUCH, and ending ROBIN D TYNER, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN773 Navy nominations (21) beginning LEE K ALLRED, and ending DONALD L ZWICK, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN774 Navy nominations (41) beginning ALLAN D ANDREW, and ending JOHNNY R WOLFE, JR, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN775 Navy nominations (17) beginning ANGELA D ALBERGOTTIE, and ending JOSEPH B SPEGELE, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN776 Navy nominations (13) beginning CHARLES J CHAN, and ending MATTHEW A WEBBER, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN777 Navy nominations (492) beginning CHRISTOPHER A ADAMS, and ending RICHARD J ZINS, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN837 Navy nominations (2) beginning STEVEN S. HARTZELL, and ending STANLEY D. RHOADES, which nominations were received by the Senate and appeared in the Congressional Record of June 25, 2003

PN838 Navy nomination of James P. Driscoll, which were received by the Senate and appeared in the Congressional Record of June 25, 2003

DEPARTMENT OF STATE

Constance Albanese Morella, of Maryland, to be Representative of the United States of America to the Organization for Economic Cooperation and Development, with rank of Ambassador.

Donald K. Steinberg, of California, a Career Member of the Senior Foreign Service,

Class of Minister-Counselor, to be Ambassador to the Federal Republic of Nigeria.

George H. Walker, of Missouri, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Hungary.

NOMINATION OF KAREN TANDY

Mr. DURBIN. Mr. President, I rise in opposition to the nomination of Karen Tandy to be Administrator of the Drug Enforcement Administration.

According to the DEA website, the top two DEA responsibilities are the following:

Investigation and preparation for the prosecution of major violators of controlled substance laws operating at interstate and international levels; and investigation and preparation for prosecution of criminals and drug gangs who perpetrate violence in our communities and terrorize citizens through fear and intimidation.

Why, then, does the DEA continue to focus its limited resources on the question of medical marijuana?

Over the past seven years, ten States have passed referendums or enacted laws authorizing medical marijuana in those States. The ten States are Alaska, Arizona, California, Colorado, Hawaii, Maine, Maryland, Nevada, Oregon, and Washington.

The first of these states was California. In 1996, voters in California passed the California Compassionate Use Act, also known as Proposition 215, to allow seriously ill people who have a doctor's recommendation to cultivate and use marijuana as a form of treatment.

However, in 2001, the Drug Enforcement Administration began aggressively targeting medical marijuana providers in California—regardless of the fact that these individuals were complying with state law.

I understand that the Supreme Court has ruled that federal law does not provide for a ''medical necessity'' exception to the prohibition on the distribution of marijuana, and that the DEA therefore has the right to enforce federal laws regarding marijuana.

However, especially given the DEA's own stated priorities and limited resources, is it appropriate for the DEA to focus on medical marijuana?

This is the question I asked Ms. Tandy, and she did not back off an inch. She simply did not give us any room to work in terms of this issue.

For example, I asked if she would be willing to support a moratorium on the raids of medical marijuana providers until Congress could hold hearings on this matter.

She replied, ''If I am confirmed as Administrator of the DEA, it will be my duty to see to the uniform enforcement of federal law. I do not believe it would be consistent with that duty for me to support a moratorium on enforcement of this law, or any law, in selected areas of the country.''

Let me be clear. I was not asking for a moratorium on the enforcement of all marijuana laws—only on the raids of these medical marijuana providers who are complying with State law.

I also was not asking for an endless moratorium—just the opportunity for Congress to exercise its oversight role of the Drug Enforcement Administration.

Yet she was unwilling to budge.

Who are these so-called criminals that the DEA is targeting and arresting?

Suzanne Pfeil is 42 years old and suffers from post-polio syndrome. She experiences extreme pain and muscle spasticity. She is allergic to opiates and does not tolerate many pharmaceutical drugs, so her physician recommended medical marijuana, in accordance with California state law. Here, in her own words, is what happened to her last September:

At dawn on September 5, 2002, I awoke to five federal agents pointing assault rifles at my head. I did not hear them come in because my respirator is rather loud.

They yelled at me to put my hands in the air and to stand up ''NOW.'' I tried to explain to them that I needed to put my hands down on the bed in order to sit up because I am paralyzed. They again shouted at me to stand up. I pointed to my crutches and braces beside the bed and said, ''I'm sorry, I can't stand up without my crutches and braces and I normally use a wheelchair.''

At that point they ripped the covers off the bed and finally realized what I was trying to explain amid their shouts and guns. They handcuffed me behind my back and left me on the bed.

The DEA then proceeded to confiscate medication recommended to me by my physician under California State Law Proposition 215. My crime? I am a member of WAMM, The Women's Alliance for Medical Marijuana, a nonprofit collective of patients and their caregivers working together to provide free medication and hospice services to approximately 250 seriously ill and dying members.

The DEA then destroyed our collective garden and arrested our Director Valerie Corral, who is an epileptic, and her caregiver and husband Michael Corral.''

Eighty-five percent of the patients in this organization are terminally ill with cancer or AIDS. Is this how the DEA should spend its precious resources?

In another case, the City of Oakland enacted a medicinal marijuana ordinance, as permitted by California law. Under the auspices of this ordinance, Ed Rosenthal grew marijuana to be sold for medicinal uses.

Even though Mr. Rosenthal was acting as an officer of the city, in February 2002, DEA agents raided his facility and arrested him for marijuana cultivation and conspiracy.

Since the federal law does not recognize ''medical necessity'' as a defense, Mr. Rosenthal was not allowed to tell the jury that he was growing the marijuana for medicinal purposes.

The prosecutors took this opportunity to present Mr. Rosenthal as a big-time drug dealer, and the jury had no choice but to convict Mr. Rosenthal.

After the trial, the jurors learned that Mr. Rosenthal was growing medical marijuana and complained that they had been misled by the court. Five jurors immediately issued a public apology to him and demanded a new trial.

Their statement said, ''In this trial, the prosecution was allowed to put all of the evidence and testimony on one of the scales, while the defense was not allowed to put its evidence and testimony on the other side. Therefore we were not allowed as a jury to properly weigh the case.''

During the sentencing phase of the trial, nine of the twelve jurors asked that Mr. Rosenthal not be imprisoned because they had convicted him ''without having all the evidence.''

Due to these unique circumstances, the judge sentenced Mr. Rosenthal to one day in prison and a $1,000 fine, the most lenient sentence allowed under law.

Yet, the prosecutor, who had asked for a six-and-a-half-year sentence, has appealed this sentence.

The San Francisco Examiner has called this a ''mean-spirited attempt to revive a losing case [and] is only throwing good money after bad.''

I think that accurately describes not only the prosecution's latest appeal, but the DEA's campaign against medical marijuana as a whole.

These raids of medical marijuana facilities also are creating tension between the DEA and local law enforcement agencies.

In California, several cities are pushing their local police to stop cooperating with the DEA.

Most notably, in October 2002, San Jose Police Chief William Lansdowne pulled his five officers from a DEA High Intensity Drug Trafficking Area task force.

In doing so, Chief Lansdowne said, ''I think the priorities are out of sync at the federal level . . . . The problem in California right now is methamphetamines, not medical marijuana.''

In order for the DEA to be successful in its efforts to target major drug traffickers and drug gangs, it must have the cooperation of local law enforcement.

This is yet another reason why the raids of medical marijuana providers must end.

Finally, I would like to address the debate regarding the potential medicinal benefit of marijuana.

I am not a doctor or a medical professional. However, the following organizations have endorsed supervised access to medical marijuana: The AIDS Action Council, the American Academy of Family Physicians, the American Nurses Association, the American Preventative Medical Association, the American Public Health Association, Kaiser Permanente, and the New England Journal of Medicine.

In 1999, the Institute of Medicine issued a report entitled ''Marijuana and Medicine: Assessing the Science Base.'' This report, authorized by the White House Office of National Drug Control Policy, stated, ''Nausea, appetite loss, pain, and anxiety are all afflictions of wasting, and all can be mitigated by marijuana.''

Furthermore, the following international agencies have recommended the use of medical marijuana: the Canadian government, the British Medical Association, the French Ministry of Health, the Israel Health Ministry, and the Australian National Task Force on Cannabis.

Even the DEA has registered eight researchers to further examine the possible medicinal benefits of smoking marijuana.

This obviously is an ongoing debate. The citizens and legislatures of ten states have spoken. I believe the DEA should suspend its raids of medical marijuana providers in these states and place such efforts at the bottom of its list of priorities.

Since Ms. Tandy is unwilling to yield at all on this point, I respectfully oppose her nomination.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2854.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2854) to amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2854) was read the third time and passed.

SOCIAL SECURITY ACT AMENDMENT

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1547 introduced earlier today by Senators BINGAMAN and DOMENICI.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1547) to amend title XXI of the Social Security Act to make a technical correction with respect to the definition of qualifying State.

There being no objection, the Senate proceeded to consider the bill.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1547) was read the third time and passed as follows:

S. 1547

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TECHNICAL CORRECTION RELATING TO THE DEFINITION OF QUALIFYING STATE UNDER TITLE XXI OF THE SOCIAL SECURITY ACT.

Effective as if included in the enactment of H.R. 2854, 108th Congress, section 2105(g)(2) of the Social Security Act, as added by section 1(b) of H.R. 2854, 108th Congress, as passed by the House of Representatives on July 25, 2003, is amended by striking ''185'' the first place it appears and inserting ''184''.

FAMILY FARMER BANKRUPTCY RELIEF ACT OF 2003

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate immediately proceed to the consideration of H.R. 2465.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2465) to extend for six months the period for which chapter 12 of title 11 the United States Code is reenacted.

There being no objection, the Senate proceeded to consider the bill.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2465) was read the third time and passed.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2004

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 172, S. 1025.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1025) to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Select Committee on Intelligence, with amendments, as follows:

[Strike the parts shown in black brackets and insert the part shown in italic.]

S. 1025

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Intelligence Authorization Act for Fiscal Year 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations.
Sec. 102. Classified schedule of authorizations.
Sec. 103. Personnel ceiling adjustments.
Sec. 104. Intelligence Community Management Account.
Sec. 105. Incorporation of reporting requirements.
Sec. 106. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense or Department of Energy.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

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Subtitle C—Surveillance

Sec. 321. Clarification and modification of sunset of surveillance-related amendments made by USA PATRIOT ACT of 2001.

Subtitle D—Reports

Sec. 331. Report on cleared insider threat to classified computer networks.
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Sec. 334. Report on modifications of policy and law on classified information to facilitate sharing of information for national security purposes.
Sec. 335. Report of Secretary of Defense and Director of Central Intelligence on strategic planning.
Sec. 336. Report on United States dependence on computer hardware and software manufactured overseas.
Sec. 337. Report on lessons learned from military operations in Iraq.

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Sec. 339. Repeal of certain report requirements relating to intelligence activities.
Subtitle E—Other Matters
Sec. 351. Extension of suspension of reorganization of Diplomatic Telecommunications Service Program Office.
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Sec. 354. Modification to definition of financial institution in the Right to Financial Privacy Act.
Sec. 355. Coordination of Federal Government research on security evaluations.
Sec. 356. Technical amendments.
TITLE IV—CENTRAL INTELLIGENCE AGENCY
Sec. 401. Amendment to certain Central Intelligence Agency Act of 1949 notification requirements.
Sec. 402. Protection of certain Central Intelligence Agency personnel from tort liability.
Sec. 403. Repeal of obsolete limitation on use of funds in Central Services Working Capital Fund.
Sec. 404. Technical amendment to Federal Information Security Management Act of 2002.
TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS
[Sec. 501. Protection of operational files of the National Security Agency.]
Sec. 501. Protection of operational files of the National Security Agency.
[Sec. 502. Provision of affordable living quarters for certain students working at National Security Agency laboratory.]
Sec. [503] *502*. **Protection of certain National Security Agency personnel from tort liability.**
[Sec. 504. Authority for intelligence community elements of Department of Defense to award personal service contracts.]

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2004 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The National Reconnaissance Office.
(11) The National Imagery and Mapping Agency.
(12) The Coast Guard.
(13) The Department of Homeland Security.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2004, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill ___ of the One Hundred Eighth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2004 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall promptly notify the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives whenever the Director exercises the authority granted by this section.

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of Central Intelligence for fiscal year 2004 the sum of $198,390,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2005.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 310 full-time personnel as of September 30, 2004. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2004 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for research and development shall remain available until September 30, 2005.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2004, there are also authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2004 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), $37,090,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2005, and funds provided for procurement purposes shall remain available until September 30, 2006.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

SEC. 105. INCORPORATION OF REPORTING REQUIREMENTS.

(a) IN GENERAL.—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill ___ of the One Hundred Eighth Congress, or in the classified annex to this Act, is hereby incorporated into this Act, and is hereby made a requirement in law.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 106. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE OR DEPARTMENT OF ENERGY.

(a) CONSULTATION IN PREPARATION.—(1) The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations referred to in section 102(a) or the classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or the Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

(2) The Secretary of Defense or the Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or the Department of Energy, as the case may be, designated by such Secretary for that purpose.

(b) SUBMITTAL.—Any report, review, study, or plan referred to in subsection (a) shall be

submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

(1) The Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate.

(2) The Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2004 the sum of $226,400,000.

TITLE III—GENERAL PROVISIONS

Subtitle A—Recurring General Provisions

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

Subtitle B—Intelligence

SEC. 311. MODIFICATION OF AUTHORITY TO OBLIGATE AND EXPEND CERTAIN FUNDS FOR INTELLIGENCE ACTIVITIES.

Section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)) is amended—

(1) by inserting ''and'' at the end of subparagraph (A);

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

SEC. 312. MODIFICATION OF NOTICE AND WAIT REQUIREMENTS ON PROJECTS TO CONSTRUCT OR IMPROVE INTELLIGENCE COMMUNITY FACILITIES.

(a) INCREASE OF THRESHOLDS FOR NOTICE.—Subsection (a) of section 602 of the Intelligence Authorization Act for Fiscal Year 1995 (Public Law 103–359; 108 Stat. 3432; 50 U.S.C. 403–2b(a)) is amended—

(1) by striking ''$750,000'' each place it appears and inserting ''$5,000,000''; and

(2) by striking ''$500,000'' each place it appears and inserting ''$1,000,000''.

(b) NOTICE AND WAIT REQUIREMENTS FOR EMERGENCY PROJECTS.—Subsection (b)(2) of that section is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(2) by inserting ''(A)'' after ''(2) REPORT.—'';

(3) by striking ''21-day period'' and inserting ''7-day period''; and

(4) by adding at the end the following new subparagraph:

''(B) Notwithstanding subparagraph (A), a project referred to in paragraph (1) may begin on the date the notification is received by the appropriate committees of Congress under that paragraph if the Director of Central Intelligence and the Secretary of Defense jointly determine that—

''(i) an emergency exists with respect to the national security or the protection of health, safety, or environmental quality; and

''(ii) any delay in the commencement of the project would harm any or all of those interests.''.

SEC. 313. USE OF FUNDS FOR COUNTERDRUG AND COUNTERTERRORISM ACTIVITIES FOR COLOMBIA.

(a) AUTHORITY.—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities for fiscal year 2004, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall be available—

(1) to support a unified campaign against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)); and

(2) to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.

(b) TERMINATION OF AUTHORITY.—The authority provided in subsection (a) shall cease to be effective if the Secretary of Defense has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(c) APPLICATION OF CERTAIN PROVISIONS OF LAW.—Sections 556, 567, and 568 of Public Law 107–115, section 8093 of the Department of Defense Appropriations Act, 2002, and the numerical limitations on the number of United States military personnel and United States individual civilian contractors in section 3204(b)(1) of Public Law 106–246 shall be applicable to funds made available pursuant to the authority contained in subsection (a).

(d) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self defense or rescuing any United States citizen to include United States Armed Forces personnel, United States civilian employees, and civilian contractors employed by the United States.

SEC. 314. PILOT PROGRAM ON ANALYSIS OF SIGNALS AND OTHER INTELLIGENCE BY INTELLIGENCE ANALYSTS OF VARIOUS ELEMENTS OF THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—The Director of Central Intelligence shall carry out a pilot program to assess the feasibility and advisability of permitting intelligence analysts of various elements of the intelligence community to access and analyze intelligence from the databases of other elements of the intelligence community in order to achieve the objectives set forth in subsection (c).

(b) COVERED INTELLIGENCE.—The intelligence to be analyzed under the pilot program under subsection (a) shall include the following:

(1) Signals intelligence of the National Security Agency.

(2) Such intelligence of other elements of the intelligence community as the Director shall select for purposes of the pilot program.

(c) OBJECTIVES.—The objectives set forth in this subsection are as follows:

(1) To enhance the capacity of the intelligence community to undertake so-called ''all source fusion'' analysis in support of the intelligence and intelligence-related missions of the intelligence community.

(2) To reduce, to the extent practicable, the amount of intelligence collected by the intelligence community that is not assessed, or reviewed, by intelligence analysts.

(3) To reduce the burdens imposed on analytical personnel of the elements of the intelligence community by current practices regarding the sharing of intelligence among elements of the intelligence community.

(d) COMMENCEMENT.—The Director shall commence the pilot program under subsection (a) not later than December 31, 2003.

(e) VARIOUS MECHANISMS REQUIRED.—In carrying out the pilot program under subsection (a), the Director shall develop and utilize various mechanisms to facilitate the access to, and the analysis of, intelligence in the databases of the intelligence community by intelligence analysts of other elements of the intelligence community, including the use of so-called ''detailees in place''.

(f) SECURITY.—(1) In carrying out the pilot program under subsection (a), the Director shall take appropriate actions to protect against the disclosure and unauthorized use of intelligence in the databases of the elements of the intelligence community which may endanger sources and methods which (as determined by the Director) warrant protection.

(2) The actions taken under paragraph (1) shall include the provision of training on the accessing and handling of information in the databases of various elements of the intelligence community and the establishment of limitations on access to information in such databases to United States persons.

(g) ASSESSMENT.—Not later than February 1, 2004, after the commencement under subsection (d) of the pilot program under subsection (a), the Under Secretary of Defense for Intelligence and the Assistant Director of Central Intelligence for Analysis and Production shall jointly carry out an assessment of the progress of the pilot program in meeting the objectives set forth in subsection (c).

(h) REPORT.—(1) The Director of Central Intelligence and the Secretary of Defense shall jointly submit to the appropriate committees of Congress a report on the assessment carried out under subsection (g).

(2) The report shall include—

(A) a description of the pilot program under subsection (a);

(B) the findings of the Under Secretary and Assistant Director as a result of the assessment;

(C) any recommendations regarding the pilot program that the Under Secretary and the Assistant Director jointly consider appropriate in light of the assessment; and

(D) any recommendations that the Director and Secretary consider appropriate for purposes of the report.

(i) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

SEC. 315. PILOT PROGRAM ON TRAINING FOR INTELLIGENCE ANALYSTS.

(a) PILOT PROGRAM REQUIRED.—(1) The Director of Central Intelligence shall carry out a pilot program to assess the feasibility and advisability of providing for the preparation of selected students for availability for employment as intelligence analysts for the intelligence and intelligence-related activities of the United States through a training program similar to the Reserve Officers' Training Corps programs of the Department of Defense.

(2) The pilot program shall be known as the Intelligence Community Analyst Training Program.

(b) ELEMENTS.—In carrying out the pilot program under subsection (a), the Director shall establish and maintain one or more cadres of students who—

(1) participate in such training as intelligence analysts as the Director considers appropriate; and

(2) upon completion of such training, are available for employment as intelligence analysts under such terms and conditions as the Director considers appropriate.

(c) DURATION.—The Director shall carry out the pilot program under subsection (a) during fiscal years 2004 through 2006.

(d) LIMITATION ON NUMBER OF MEMBERS DURING FISCAL YEAR 2004.—The total number of individuals participating in the pilot program under subsection (a) during fiscal year 2004 may not exceed 150 students.

(e) RESPONSIBILITY.—The Director shall carry out the pilot program under subsection (a) through the Assistant Director of Central Intelligence for Analysis and Production.

(f) REPORTS.—(1) Not later than 120 days after the date of the enactment of this Act, the Director shall submit to Congress a preliminary report on the pilot program under subsection (a), including a description of the pilot program and the authorities to be utilized in carrying out the pilot program.

(2) Not later than one year after the commencement of the pilot program, the Director shall submit to Congress a report on the pilot program. The report shall include—

(A) a description of the activities under the pilot program, including the number of individuals who participated in the pilot program and the training provided such individuals under the pilot program;

(B) an assessment of the effectiveness of the pilot program in meeting the purpose of the pilot program; and

(C) any recommendations for additional legislative or administrative action that the Director considers appropriate in light of the pilot program.

(g) FUNDING.—Of the amounts authorized to be appropriated by this Act, $8,000,000 shall be available in fiscal year 2004 to carry out this section.

SEC. 316. EXTENSION OF NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.

Section 1007(a) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2442; 50 U.S.C. 401 note) is amended by striking ''September 1, 2003,'' and inserting ''September 1, 2004,''.

Subtitle C—Surveillance

SEC. 321. CLARIFICATION AND MODIFICATION OF SUNSET OF SURVEILLANCE-RELATED AMENDMENTS MADE BY USA PATRIOT ACT OF 2001.

(a) CLARIFICATION.—Section 224 of the USA PATRIOT ACT of 2001 (Public Law 107–56; 115 Stat. 295) is amended by adding at the end the following new subsection:

''(c) EFFECT OF SUNSET.—Effective on December 31, 2005, each provision of law the amendment of which is sunset by subsection (a) shall be revived so as to be in effect as such provision of law was in effect on October 25, 2001.''.

(b) MODIFICATION.—Subsection (a) of that section is amended by inserting ''204,'' after ''203(c),''.

Subtitle D—Reports

SEC. 331. REPORT ON CLEARED INSIDER THREAT TO CLASSIFIED COMPUTER NETWORKS.

(a) REPORT REQUIRED.—The Director of Central Intelligence and the Secretary of Defense shall jointly submit to the appropriate committees of Congress a report on the risks to the national security of the United States of the current computer security practices of the elements of the intelligence community and of the Department of Defense.

(b) ASSESSMENTS.—The report under subsection (a) shall include an assessment of the following:

(1) The vulnerability of the computers and computer systems of the elements of the intelligence community, and of the Department of Defense, to various threats from foreign governments, international terrorist organizations, and organized crime, including information warfare (IW), Information Operations (IO), Computer Network Exploitation (CNE), and Computer Network Attack (CNA).

(2) The risks of providing users of local area networks (LANs) or wide-area networks (WANs) of computers that include classified information with capabilities for electronic mail, upload and download, or removable storage media without also deploying comprehensive computer firewalls, accountability procedures, or other appropriate security controls.

(3) Any other matters that the Director and the Secretary jointly consider appropriate for purposes of the report.

(c) INFORMATION ON ACCESS TO NETWORKS.—The report under subsection (a) shall also include information as follows:

(1) An estimate of the number of access points on each classified computer or computer system of an element of the intelligence community or the Department of Defense that permit unsupervised uploading or downloading of classified information, set forth by level of classification.

(2) An estimate of the number of individuals utilizing such computers or computer systems who have access to input-output devices on such computers or computer systems.

(3) A description of the policies and procedures governing the security of the access points referred to in paragraph (1), and an assessment of the adequacy of such policies and procedures.

(4) An assessment of viability of utilizing other technologies (including so-called ''thin client servers'') to achieve enhanced security of such computers and computer systems through more rigorous control of access to such computers and computer systems.

(d) RECOMMENDATIONS.—The report under subsection (a) shall also include such recommendations for modifications or improvements of the current computer security practices of the elements of the intelligence community, and of the Department of Defense, as the Director and the Secretary jointly consider appropriate as a result of the assessments under subsection (b) and the information under subsection (c).

(e) SUBMITTAL DATE.—The report under subsection (a) shall be submitted not later than February 15, 2004.

(f) FORM.—The report under subsection (a) may be submitted in classified or unclassified form, at the election of the Director.

(g) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

(2) The term ''elements of the intelligence community'' means the elements of the intelligence community set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 332. REPORT ON SECURITY BACKGROUND INVESTIGATIONS AND SECURITY CLEARANCE PROCEDURES OF THE FEDERAL GOVERNMENT.

(a) REPORT REQUIRED.—The Director of Central Intelligence and the Secretary of Defense shall jointly submit to the appropriate committees of Congress a report on the utility and effectiveness of the current security background investigations and security clearance procedures of the Federal Government in meeting the purposes of such investigations and procedures.

(b) PARTICULAR REPORT MATTERS.—In preparing the report, the Director and the Secretary shall address in particular the following:

(1) A comparison of the costs and benefits of conducting background investigations for Secret clearance with the costs and benefits of conducting full field background investigations.

(2) The standards governing the revocation of security clearances.

(c) RECOMMENDATIONS.—The report under subsection (a) shall include such recommendations for modifications or improvements of the current security background investigations or security clearance procedures of the Federal Government as the Director and the Secretary jointly consider appropriate as a result of the preparation of the report under that subsection.

(d) SUBMITTAL DATE.—The report under subsection (a) shall be submitted not later than February 15, 2004.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the House of Representatives.

SEC. 333. REPORT ON DETAIL OF CIVILIAN INTELLIGENCE PERSONNEL AMONG ELEMENTS OF THE INTELLIGENCE COMMUNITY AND THE DEPARTMENT OF DEFENSE.

(a) REPORT REQUIRED.—The heads of the elements of the intelligence community shall jointly submit to the appropriate committees of Congress a report on means of improving the detail or transfer of civilian intelligence personnel between and among the various elements of the intelligence community for the purpose of enhancing the flexibility and effectiveness of the intelligence community in responding to changes in requirements for the collection, analysis, and dissemination of intelligence.

(b) REPORT ELEMENTS.—The report under subsection (a) shall—

(1) set forth a variety of proposals on means of improving the detail or transfer of civilian intelligence personnel as described in that subsection;

(2) identify the proposal or proposals determined by the heads of the elements of the intelligence community to be most likely to meet the purpose described in that subsection; and

(3) include such recommendations for such legislative or administrative action as the heads of the elements of the intelligence community consider appropriate to implement the proposal or proposals identified under paragraph (2).

(c) SUBMITTAL DATE.—The report under subsection (a) shall be submitted not later than February 15, 2004.

(d) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the House of Representatives.

(2) The term ''elements of the intelligence community'' means the elements of the intelligence community set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term ''heads of the elements of the intelligence community'' includes the Secretary of Defense with respect to each element of the intelligence community within the Department of Defense or the military departments.

SEC. 334. REPORT ON MODIFICATIONS OF POLICY AND LAW ON CLASSIFIED INFORMATION TO FACILITATE SHARING OF INFORMATION FOR NATIONAL SECURITY PURPOSES.

(a) REPORT.—Not later than four months after the date of the enactment of this Act, the President shall submit to the appropriate committees of Congress a report that—

(1) identifies impediments in current policy and regulations to the sharing of classified information horizontally across and among Federal departments and agencies, and between Federal departments and agencies and vertically to and from agencies of State and local governments and the private sector, for national security purposes, including homeland security;

(2) proposes appropriate modifications of policy, law, and regulations to eliminate such impediments in order to facilitate such sharing of classified information for homeland security purposes, including homeland security; and

(3) outlines a plan of action (including appropriate milestones and funding) to establish the Terrorist Threat Integration Center as called for in the Information on the State of the Union given by the President to Congress under section 3 of Article II of the Constitution of the United States in 2003.

(b) CONSIDERATIONS.—In preparing the report under subsection (a), the President shall—

(1) consider the extent to which the reliance on a document-based approach to the protection of classified information impedes the sharing of classified information; and

(2) consider the extent to which the utilization of a database-based approach, or other electronic approach, to the protection of classified information might facilitate the sharing of classified information.

(c) COORDINATION WITH OTHER INFORMATION SHARING ACTIVITIES.—In preparing the report under subsection (a), the President shall, to the maximum extent practicable, take into account actions being undertaken under the Homeland Security Information Sharing Act (subtitle I of title VIII of Public Law 107–296; 116 Stat. 2252; 6 U.S.C. 481 et seq.).

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Select Committee on Homeland Security, and the Committee on Armed Services of the House of Representatives.

SEC. 335. REPORT OF SECRETARY OF DEFENSE AND DIRECTOR OF CENTRAL INTELLIGENCE ON STRATEGIC PLANNING.

(a) REPORT.—Not later than February 15, 2004, the Secretary of Defense and the Director of Central Intelligence shall jointly submit to the appropriate committees of Congress a report that assesses progress in the following:

(1) The development by the Department of Defense and the intelligence community of a comprehensive and uniform analytical capability to assess the utility and advisability of various sensor and platform architectures and capabilities for the collection of intelligence.

(2) The improvement of coordination between the Department and the intelligence community on strategic and budgetary planning.

(b) FORM.—The report under subsection (a) may be submitted in classified form.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

SEC. 336. REPORT ON UNITED STATES DEPENDENCE ON COMPUTER HARDWARE AND SOFTWARE MANUFACTURED OVERSEAS.

(a) REPORT.—Not later than February 15, 2004, the Director of Central Intelligence shall submit to the appropriate committees of Congress a report on the extent of United States dependence on computer hardware or software that is manufactured overseas.

(b) ELEMENTS.—The report under subsection (a) shall address the following:

(1) The extent to which the United States currently depends on computer hardware or software that is manufactured overseas.

(2) The extent to which United States dependence on such computer hardware or software is increasing.

(3) The vulnerabilities of the national security and economy of the United States as a result of United States dependence on such computer hardware or software.

(4) Any other matters relating to United States dependence on such computer hardware or software that the Director considers appropriate.

(c) CONSULTATION WITH PRIVATE SECTOR.—In preparing the report under subsection (a), the Director may consult, and is encouraged to consult, with appropriate persons and entities in the computer hardware or software industry and with other appropriate persons and entities in the private sector.

(d) FORM.—(1) The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(2) The report may be in the form of a National Intelligence Estimate.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

SEC. 337. REPORT ON LESSONS LEARNED FROM MILITARY OPERATIONS IN IRAQ.

(a) REPORT.—Not later than one year after the date of the enactment of this Act, the Director of Central Intelligence shall submit to the appropriate committees of Congress a report on the intelligence lessons learned as a result of Operation Iraqi Freedom.

(b) RECOMMENDATIONS.—The report under subsection (a) shall include such recommendations on means of improving training, equipment, operations, coordination, and collection of or for intelligence as the Director considers appropriate.

(c) FORM.—The report under subsection (a) shall be submitted in classified form.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

SEC. 338. REPORTS ON CONVENTIONAL WEAPONS AND AMMUNITION OBTAINED BY IRAQ IN VIOLATION OF CERTAIN UNITED NATIONS SECURITY COUNCIL RESOLUTIONS.

(a) PRELIMINARY REPORT.—Not later than 120 days after the date of the cessation of hostilities in Iraq (as determined by the President), the Director of the Defense Intelligence Agency shall submit to the appropriate committees of Congress a preliminary report on all information obtained by the Department of Defense and the intelligence community on the conventional weapons and ammunition obtained by Iraq in violation of applicable resolutions of the United Nations Security Council adopted since the invasion of Kuwait by Iraq in August 1990.

(b) FINAL REPORT.—(1) Not later than 270 days after the date of the cessation of hostilities in Iraq (as so determined), the Director shall submit to the appropriate committees of Congress a final report on the information described in subsection (a).

(2) The final report under paragraph (1) shall include such updates of the preliminary report under subsection (a) as the Director considers appropriate.

(c) ELEMENTS.—Each report under this section shall set forth, to the extent practicable, with respect to each shipment of weapons or ammunition addressed in such report the following:

(1) The country of origin.

(2) Any country of transshipment.

(d) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

SEC. 339. REPEAL OF CERTAIN REPORT REQUIREMENTS RELATING TO INTELLIGENCE ACTIVITIES.

(a) ANNUAL EVALUATION OF PERFORMANCE AND RESPONSIVENESS OF INTELLIGENCE COMMUNITY.—Section 105 of the National Security Act of 1947 (50 U.S.C. 403–5) is amended by striking subsection (d).

(b) PERIODIC AND SPECIAL REPORTS ON DISCLOSURE OF INTELLIGENCE INFORMATION TO UNITED NATIONS.—Section 112 of the National Security Act of 1947 (50 U.S.C. 404g) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(c) ANNUAL REPORT ON INTELLIGENCE COMMUNITY COOPERATION WITH COUNTERDRUG ACTIVITIES.—Section 114 of the National Security Act of 1947 (50 U.S.C. 404i) is amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b) through (f) as subsections (a) through (e), respectively.

(d) ANNUAL REPORT ON RUSSIAN NUCLEAR FACILITIES AND FORCES.—Section 114 of the National Security Act of 1947, as amended by subsection (c) of this section, is further amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b) through (e) as subsections (a) through (d), respectively.

(e) ANNUAL REPORT ON COVERT LEASES.—Section 114 of the National Security Act of 1947, as amended by this section, is further amended—

(1) by striking subsection (c); and

(2) by striking subsection (d).

(f) ANNUAL REPORT ON PROTECTION OF COVERT AGENTS.—Section 603 of the National Security Act of 1947 (50 U.S.C. 423) is repealed.

(g) ANNUAL REPORT ON CERTAIN FOREIGN COMPANIES INVOLVED IN PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.—Section 827 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2430; 50 U.S.C. 404n–3) is repealed.

(h) ANNUAL REPORT ON INTELLIGENCE ACTIVITIES OF PEOPLE'S REPUBLIC OF CHINA.—Section 308 of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 111 Stat. 2253; 50 U.S.C. 402a note) is repealed.

(i) ANNUAL REPORT ON COORDINATION OF COUNTERINTELLIGENCE MATTERS WITH FBI.—Section 811(c) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 50 U.S.C. 402a(c)) is amended—

(1) by striking paragraph (6); and

(2) by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(j) REPORTS ON DECISIONS NOT TO PROSECUTE VIOLATIONS OF CLASSIFIED INFORMATION PROCEDURES ACT.—Section 13 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) by striking subsections (a) and (b); and

(2) by striking ''(c)''.

(k) REPORT ON POSTEMPLOYMENT ASSISTANCE FOR TERMINATED INTELLIGENCE EMPLOYEES.—Section 1611 of title 10, United States Code, is amended by striking subsection (e).

(l) ANNUAL REPORT ON ACTIVITIES OF FBI PERSONNEL OUTSIDE THE UNITED STATES.—Section 540C of title 18, United States Code, is repealed.

(m) ANNUAL REPORT ON EXCEPTIONS TO CONSUMER DISCLOSURE REQUIREMENTS FOR NATIONAL SECURITY INVESTIGATIONS.—Section 604(b)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)) is amended—

(1) by striking subparagraphs (D) and (E); and

(2) by redesignating subparagraph (F) as subparagraph (D).

(n) CONFORMING AMENDMENTS.—Section 507 of the National Security Act of 1947 (50 U.S.C. 415b) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking subparagraphs (A), (C), (D), (G), (I), (J), and (L); and

(ii) by redesignating subparagraphs (B), (E), (F), (H), (K), (M), and (N) as subparagraphs (A), (B), (C), (D), (E), (F), and (G), respectively; and

(iii) in subparagraph (E), as so redesignated, by striking ''section 114(c)'' and inserting ''section 114(a)''; and

(B) in paragraph (2)—

(i) by striking subparagraphs (A), (E), and (F);

(ii) by redesignating subparagraphs (B), (D), and (G) as subparagraphs (A), (B), and (C), respectively; and

(iii) in subparagraph (A), as so redesignated, by striking ''section 114(d)'' and inserting ''section 114(b)''; and

(2) in subsection (b)—

(A) by striking paragraph (1) and (3); and

(B) by redesignating paragraphs (2), (4), (5), (6), (7), and (8) as paragraphs (1), (2), (3), (4), (5), and (6), respectively.

(o) CLERICAL AMENDMENTS.—

(1) NATIONAL SECURITY ACT OF 1947.—The table of contents for the National Security Act of 1947 is amended by striking the item relating to section 603.

(2) TITLE 18, UNITED STATES CODE.—The table of sections at the beginning of chapter 33 of title 18, United States Code, is amended by striking the item relating to section 540C.

(p) EFFECTIVE DATE.—The amendments made by this section shall take effect on December 31, 2003.

Subtitle E—Other Matters

SEC. 351. EXTENSION OF SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

Section 311 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107–108; 22 U.S.C. 7301 note) is amended—

(1) in the heading, by striking ''**TWO-YEAR**'' before ''**SUSPENSION OF REORGANIZATION**''; and

(2) in the text, by striking ''ending on October 1, 2003'' and inserting ''ending on the date that is 60 days after the appropriate congressional committees of jurisdiction (as defined in section 324(d) of that Act (22 U.S.C. 7304(d)) are notified jointly by the Secretary of State (or the Secretary's designee) and the Director of the Office of Management and Budget (or the Director's designee) that the operational framework for the office has been terminated''.

SEC. 352. MODIFICATIONS OF AUTHORITIES ON EXPLOSIVE MATERIALS.

(a) CLARIFICATION OF ALIENS AUTHORIZED TO DISTRIBUTE EXPLOSIVE MATERIALS.—Section 842(d)(7) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B)—

(A) by inserting ''or'' at the end of clause (i); and

(B) by striking clauses (iii) and (iv); and

(3) by adding the following new subparagraphs:

''(C) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, who is present in the United States under military orders for training or other military purpose authorized by the United States and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the authorized military purpose; or

''(D) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;''.

(b) CLARIFICATION OF ALIENS AUTHORIZED TO POSSESS OR RECEIVE EXPLOSIVE MATERIALS.—Section 842(i)(5) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B)—

(A) by inserting ''or'' at the end of clause (i); and

(B) by striking clauses (iii) and (iv); and

(3) by adding the following new subparagraphs:

''(C) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, who is present in the United States under military orders for training or other military purpose authorized by the United States and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the authorized military purpose; or

''(D) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;''.

SEC. 353. MODIFICATION OF PROHIBITION ON THE NATURALIZATION OF CERTAIN PERSONS.

Section 313(e)(4) of the Immigration and Nationality Act (8 U.S.C. 1424(e)(4)) is amended—

(1) by inserting ''when Department of Defense activities are relevant to the determination'' after ''Secretary of Defense''; and

(2) by inserting ''and the Secretary of Homeland Security'' after ''Attorney General''.

SEC. 354. MODIFICATION TO DEFINITION OF FINANCIAL INSTITUTION IN THE RIGHT TO FINANCIAL PRIVACY ACT.

The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101(1) (12 U.S.C. 3401(1)), by inserting '', except as provided in section 1114,'' before ''means any office''; and

(2) in section 1114 (12 U.S.C. 3414), by adding at the end the following:

''(c) For purposes of this section, the term 'financial institution' has the same meaning as in section 5312(a)(2) of title 31, United States Code, except that, for purposes of this section, such term shall include only such a financial institution any part of which is located inside any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the United States Virgin Islands.''.

SEC. 355. COORDINATION OF FEDERAL GOVERNMENT RESEARCH ON SECURITY EVALUATIONS.

(a) WORKSHOPS FOR COORDINATION OF RESEARCH.—The National Science Foundation and the Office of Science and Technology Policy shall jointly sponsor not less than two workshops on the coordination of Federal Government research on the use of behavioral, psychological, and physiological assessments of individuals in the conduct of security evaluations.

(b) DEADLINE FOR COMPLETION OF ACTIVITIES.—The activities of the workshops sponsored under subsection (a) shall be completed not later than March 1, 2004.

(c) PURPOSES.—The purposes of the workshops sponsored under subsection (a) are as follows:

(1) To provide a forum for cataloging and coordinating Federally-funded research activities relating to the development of new techniques in the behavioral, psychological, or physiological assessment of individuals to be used in security evaluations.

(2) To develop a research agenda for the Federal Government on behavioral, psychological, and physiological assessments of individuals, including an identification of the research most likely to advance the understanding of the use of such assessments of individuals in security evaluations.

(3) To distinguish between short-term and long-term areas of research on behavioral, psychological, and physiological assessments of individuals in order maximize the utility of short-term and long-term research on such assessments.

(4) To identify the Federal agencies best suited to support research on behavioral, psychological, and physiological assessments of individuals.

(5) To develop recommendations for coordinating future Federally-funded research for the development, improvement, or enhancement of security evaluations.

(d) ADVISORY GROUP.—(1) In order to assist the National Science Foundation and the Office of Science and Technology Policy in carrying out the activities of the workshops sponsored under subsection (a), there is hereby established an interagency advisory group with respect to such workshops.

(2) The advisory group shall be composed of the following:

(A) A representative of the Social, Behavioral, and Economic Directorate of the National Science Foundation.

(B) A representative of the Office of Science, and Technology Policy.

(C) The Secretary of Defense, or a designee of the Secretary.

(D) The Secretary of State, or a designee of the Secretary.

(E) The Attorney General, or a designee of the Attorney General.

(F) The Secretary of Energy, or a designee of the Secretary.

(G) The Secretary of Homeland Security, or a designee of the Secretary.

(H) The Director of Central Intelligence, or a designee of the Director.

(I) The Director of the Federal Bureau of Investigation, or a designee of the Director.

(J) The National Counterintelligence Executive, or a designee of the National Counterintelligence Executive.

(K) Any other official assigned to the advisory group by the President for purposes of this section.

(3) The members of the advisory group under subparagraphs (A) and (B) of paragraph (2) shall jointly head the advisory group.

(4) The advisory group shall provide the Foundation and the Office such information, advice, and assistance with respect to the workshops sponsored under subsection (a) as the advisory group considers appropriate.

(5) The advisory group shall not be treated as an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) REPORT.—Not later than March 1, 2004, the National Science Foundation and the Office of Science and Technology Policy shall jointly submit Congress a report on the results of activities of the workshops sponsored under subsection (a), including the findings and recommendations of the Foundation and the Office as a result of such activities.

(f) FUNDING.—(1) Of the amount authorized to be appropriated for the Intelligence Community Management Account by section 104(a), $500,000 shall be available to the National Science Foundation and the Office of Science and Technology Policy to carry out this section.

(2) The amount authorized to be appropriated by paragraph (1) shall remain available until expended.

SEC. 356. TECHNICAL AMENDMENTS.

(a) NATIONAL SECURITY ACT OF 1947.—Subsection (c)(1) of section 112 of the National Security Act of 1947, as redesignated by section 339(b) of this Act, is further amended by striking ''section 103(c)(6)'' and inserting ''section 103(c)(7)''.

(b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(1) Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) is amended by striking ''section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6))'' and inserting ''section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))''.

(2) Section 15 of that Act (50 U.S.C. 403o) is amended—

(A) in subsection (a)(1), by striking ''special policemen of the General Services Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policeman for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes' (40 U.S.C. 318),'' and inserting ''officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40, United States Code,''; and

(B) in subsection (b), by striking ''the fourth section of the Act referred to in subsection (a) of this section (40 U.S.C. 318c)'' and inserting ''section 1315(c)(2) of title 40, United States Code''.

(c) NATIONAL SECURITY AGENCY ACT OF 1959.—Section 11 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended—

(1) in subsection (a)(1), by striking ''special policemen of the General Services Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policeman for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes' (40 U.S.C. 318)'' and inserting ''officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40, United States Code,''; and

(2) in subsection (b), by striking ''the fourth section of the Act referred to in subsection (a) (40 U.S.C. 318c)'' and inserting ''section 1315(c)(2) of title 40, United States Code''.

(d) INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003.—Section 343 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2399; 50 U.S.C. 404n–2) is amended—

(1) in subsection (c), by striking ''section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6))'' and inserting ''section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))''; and

(2) in subsection (e)(2), by striking ''section 103(c)(6)'' and inserting ''section 103(c)(7)''.

(e) PUBLIC LAW 107–173.—Section 201(c)(3)(F) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173; 116 Stat. 548; 8 U.S.C. 1721(c)(3)(F)) is amended by striking ''section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6))'' and inserting ''section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))''.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. AMENDMENT TO CERTAIN CENTRAL INTELLIGENCE AGENCY ACT OF 1949 NOTIFICATION REQUIREMENTS.

Section 4(b)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403e(b)(5)) is amended inserting '', other than regulations under paragraph (1),'' after ''Regulations''.

SEC. 402. PROTECTION OF CERTAIN CENTRAL INTELLIGENCE AGENCY PERSONNEL FROM TORT LIABILITY.

Section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o) is amended by adding at the end the following new subsection:

''(d)(1) Notwithstanding any other provision of law, any Agency personnel designated by the Director under subsection (a), or designated by the Director under section 5(a)(4) to carry firearms for the protection of current or former Agency personnel and their immediate families, defectors and their immediate families, and other persons in the United States under Agency auspices, shall be considered for purposes of chapter 171 of title 28, United States Code, or any other provision of law relating to tort liability, to be acting within the scope of their office or employment when such Agency personnel take reasonable action, which may include the use of force, to—

''(A) protect an individual in the presence of such Agency personnel from a crime of violence;

''(B) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or

''(C) prevent the escape of any individual whom such Agency personnel reasonably believe to have committed a crime of violence in the presence of such Agency personnel.

''(2) Paragraph (1) shall not affect the authorities of the Attorney General under section 2679(d)(1) of title 28, United States Code.

''(3) In this subsection, the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code.''.

SEC. 403. REPEAL OF OBSOLETE LIMITATION ON USE OF FUNDS IN CENTRAL SERVICES WORKING CAPITAL FUND.

Section 21(f)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(f)(2)) is amended—

(1) in subparagraph (A), by striking ''(A) Subject to subparagraph (B), the Director'' and inserting ''The Director''; and

(2) by striking subparagraph (B).

SEC. 404. TECHNICAL AMENDMENT TO FEDERAL INFORMATION SECURITY MANAGEMENT ACT OF 2002.

Section 3535(b)(1) of title 44, United States Code, as added by section 1001(b)(1) of the Homeland Security Act of 2002 (Public Law 107–296), and section 3545(b)(1) of title 44, United States Code, as added by section 301(b)(1) of the E–Government Act of 2002 (Public Law 107–347), are each amended by inserting ''or any other law'' after ''1978''.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

[SEC. 501. PROTECTION OF OPERATIONAL FILES OF THE NATIONAL SECURITY AGENCY.

[(a) CONSOLIDATION OF CURRENT PROVISIONS ON PROTECTION OF OPERATIONAL FILES.—The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by transferring sections 105C and 105D to the end of title VII and redesignating such sections, as so transferred, as sections 703 and 704, respectively.

[(b) PROTECTION OF OPERATIONAL FILES OF NSA.—Title VII of such Act, as amended by subsection (a), is further amended by adding at the end the following new section:

[''OPERATIONAL FILES OF THE NATIONAL SECURITY AGENCY

[''SEC. 705. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the National Security Agency, with the coordination of the Director of Central Intelligence, may exempt operational files of the National Security Agency from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

[''(2)(A) Subject to subparagraph (B), in this section, the term 'operational files' means files of the National Security Agency (hereafter in this section referred to as 'NSA') which document the means by which foreign intelligence or counterintelligence is collected through technical systems.

[''(B) Files which are the sole repository of disseminated intelligence are not operational files.

[''(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

[''(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code;

[''(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code; or

[''(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

[''(i) The Permanent Select Committee on Intelligence of the House of Representatives.

[''(ii) The Select Committee on Intelligence of the Senate.

[''(iii) The Intelligence Oversight Board.

[''(iv) The Department of Justice.

[''(v) The Office of General Counsel of NSA.

[''(vi) The Office of the Director of NSA.

[''(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

[''(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

[''(C) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.

[''(D) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1), and which have been returned to exempted operational files for sole retention shall be subject to search and review.

[''(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2004, and which specifically cites and repeals or modifies such provisions.

[''(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NSA has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

[''(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

[''(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NSA, such information shall be examined ex parte, in camera by the court.

[''(ii) The court shall determine, to the fullest extent practicable, the issues of fact based on sworn written submissions of the parties.

[''(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

[''(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NSA shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

[''(II) The court may not order NSA to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NSA's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

[''(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

[''(vi) If the court finds under this paragraph that NSA has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NSA to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this subsection.

[''(vii) If at any time following the filing of a complaint pursuant to this paragraph NSA agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

[''(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence before submission to the court.

[''(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of the National Security Agency and the Director of Central Intelligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from a category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

[''(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of a particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

[''(3) A complainant that alleges that NSA has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining the following:

[''(A) Whether NSA has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004 or before the expiration of the 10-year period beginning on the date of the most recent review.

[''(B) Whether NSA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.''.

[(c) CONFORMING AMENDMENTS.—(1) Section 701(b) of the National Security Act of 1947 (50 U.S.C. 431(b)) is amended by striking ''For purposes of this title'' and inserting ''In this section and section 702,''.

[(2) Section 702(c) of such Act (50 U.S.C. 432(c)) is amended by striking ''enactment of this title'' and inserting ''October 15, 1984,''.

[(3)(A) The title heading for title VII of such Act is amended to read as follows:

[''TITLE VII—PROTECTION OF OPERATIONAL FILES''.

[(B) The section heading for section 701 of such Act is amended to read as follows:

[''PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY''.

[(C) The section heading for section 702 of such Act is amended to read as follows:

[''DECENNIAL REVIEW OF EXEMPTED CENTRAL INTELLIGENCE AGENCY OPERATIONAL FILES.''.

[(d) CLERICAL AMENDMENTS.—The table of contents for the National Security Act of 1947 is amended—

[(1) by striking the items relating to sections 105C and 105D; and

[(2) by striking the items relating to title VII and inserting the following new items:

[''TITLE VII—PROTECTION OF OPERATIONAL FILES

[''Sec. 701. Protection of operational files of the Central Intelligence Agency.

[''Sec. 702. Decennial review of exempted Central Intelligence Agency operational files.

[''Sec. 703. Protection of operational files of the National Imagery and Mapping Agency.

[''Sec. 704. Protection of operational files of the National Reconnaissance Office.

[''Sec. 705. Protection of operational files of the National Security Agency.''.]

SEC. 501. PROTECTION OF OPERATIONAL FILES OF THE NATIONAL SECURITY AGENCY.

(a) CONSOLIDATION OF CURRENT PROVISIONS ON PROTECTION OF OPERATIONAL FILES.—The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by transferring sections 105C and 105D to the end of title VII and redesignating such sections, as so transferred, as sections 703 and 704, respectively.

(b) PROTECTION OF OPERATIONAL FILES OF NSA.—Title VII of such Act, as amended by subsection (a), is further amended by adding at the end the following new section:

''OPERATIONAL FILES OF THE NATIONAL SECURITY AGENCY

''SEC. 705. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) Operational files of the National Security Agency (hereafter in this section referred to as 'NSA') may be exempted by the Director of NSA, in coordination with the Director of Central Intelligence, from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

''(2)(A) In this section, the term 'operational files' means—

''(i) files of the Signals Intelligence Directorate, and its successor organizations, which document the means by which foreign intelligence or counterintelligence is collected through technical systems; and

''(ii) files of the Research Associate Directorate, and its successor organizations, which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

''(B) Files which are the sole repository of disseminated intelligence, and files that have been accessioned into NSA Archives, or its successor organizations, are not operational files.

''(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

''(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code;

''(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code; or

''(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

''(i) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

''(ii) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

''(iii) The Intelligence Oversight Board.

''(iv) The Department of Justice.

''(v) The Office of General Counsel of NSA.

''(vi) The Office of the Inspector General of the Department of Defense.

''(vii) The Office of the Director of NSA.

''(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

''(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

''(C) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.

''(D) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1), and which have been returned to exempted operational files for sole retention shall be subject to search and review.

''(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2004, and which specifically cites and repeals or modifies such provisions.

''(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NSA has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

''(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

''(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NSA, such information shall be examined ex parte, in camera by the court.

''(ii) The court shall determine, to the fullest extent practicable, the issues of fact based on sworn written submissions of the parties.

''(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

''(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NSA shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

''(II) The court may not order NSA to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NSA's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

''(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

''(vi) If the court finds under this paragraph that NSA has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NSA to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this subsection.

''(vii) If at any time following the filing of a complaint pursuant to this paragraph NSA agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

''(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence before submission to the court.

''(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of the National Security Agency and the Director of Central Intelligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from a category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

''(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of a particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

''(3) A complainant that alleges that NSA has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining the following:

''(A) Whether NSA has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2004 or before the expiration of the 10-year period beginning on the date of the most recent review.

''(B) Whether NSA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.''.

(c) CONFORMING AMENDMENTS.—(1) Section 701(b) of the National Security Act of 1947 (50 U.S.C. 431(b)) is amended by striking ''For purposes of this title'' and inserting ''In this section and section 702,''.

(2) Section 702(c) of such Act (50 U.S.C. 432(c)) is amended by striking ''enactment of this title'' and inserting ''October 15, 1984,''.

(3)(A) The title heading for title VII of such Act is amended to read as follows:

''TITLE VII—PROTECTION OF OPERATIONAL FILES''.

(B) The section heading for section 701 of such Act is amended to read as follows:

''PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY''.

(C) The section heading for section 702 of such Act is amended to read as follows:

''DECENNIAL REVIEW OF EXEMPTED CENTRAL INTELLIGENCE AGENCY OPERATIONAL FILES''.

(d) CLERICAL AMENDMENTS.—The table of contents for the National Security Act of 1947 is amended—

(1) by striking the items relating to sections 105C and 105D; and

(2) by striking the items relating to title VII and inserting the following new items:

''TITLE VII—PROTECTION OF OPERATIONAL FILES

''Sec. 701. Protection of operational files of the Central Intelligence Agency.

''Sec. 702. Decennial review of exempted Central Intelligence Agency operational files.

''Sec. 703. Protection of operational files of the National Imagery and Mapping Agency.

''Sec. 704. Protection of operational files of the National Reconnaissance Office.

''Sec. 705. Protection of operational files of the National Security Agency.''.

[SEC. 502. PROVISION OF AFFORDABLE LIVING QUARTERS FOR CERTAIN STUDENTS WORKING AT NATIONAL SECURITY AGENCY LABORATORY.

[Section 2195 of title 10, United States Code, is amended by adding at the end the following new subsection:

['(d)(1) The Director of the National Security Agency may provide affordable living quarters to a student in the Student Educational Employment Program or similar program (as prescribed by the Office of Personnel Management) while the student is employed at the laboratory of the Agency.

['(2) Notwithstanding section 5911(c) of title 5, living quarters may be provided under paragraph (1) without charge, or at rates or charges specified in regulations prescribed by the Director.''.]

SEC. [503] *502*. PROTECTION OF CERTAIN NATIONAL SECURITY AGENCY PERSONNEL FROM TORT LIABILITY.

Section 11 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by adding at the end the following new subsection:

''(d)(1) Notwithstanding any other provision of law, agency personnel designated by the Director of the National Security Agency under subsection (a) shall be considered for purposes of chapter 171 of title 28, United States Code, or any other provision of law relating to tort liability, to be acting within the scope of their office or employment when such agency personnel take reasonable action, which may include the use of force, to—

''(A) protect an individual in the presence of such agency personnel from a crime of violence;

''(B) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or

''(C) prevent the escape of any individual whom such agency personnel reasonably believe to have committed a crime of violence in the presence of such agency personnel.

''(2) Paragraph (1) shall not affect the authorities of the Attorney General under section 2679(d)(1) of title 28, United States Code.

''(3) In this subsection, the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code.''.

[SEC. 504. AUTHORITY FOR INTELLIGENCE COMMUNITY ELEMENTS OF DEPARTMENT OF DEFENSE TO AWARD PERSONAL SERVICE CONTRACTS.

[(a) AUTHORITY.—Notwithstanding any other provision of law, amounts appropriated or otherwise made available to a covered component of the Department of Defense may be expended for personal service contracts necessary to carry out the mission of the covered component, including personal services without regard to limitations on types of persons to be employed.

[(b) COVERED COMPONENT OF THE DEPARTMENT OF DEFENSE DEFINED.—In this section, the term ''covered component of the Department of Defense'' means any element of the Department of Defense that is a component of the intelligence community as set forth in or designated under section 3(4) of the National Security Act of 1934 (50 U.S.C. 401a(4)).]

Mr. ROBERTS. Mr. President, I am pleased to appear before my colleagues to support early Senate passage of the fiscal year 2004 intelligence authorization bill. This is a good bill, crafted within the unique bipartisan process used for over a quarter century by the Senate Intelligence Committee.

No bipartisan effort can be effective without good personal cooperation. I

have received such cooperation from my friend and colleague, the distinguished Vice Chairman, Senator ROCKEFELLER. It is a privilege to be working with him on these important national security issues.

This bill will serve our Nation's security interests during a time of troubling international conflict. I would like to review a few of the bill's significant provisions and some of the difficult budget choices which the Intelligence Committee made.

The version of our bill which Senators are considering reflects changes which the Armed Services Committee made to the bill on sequential referral. The Intelligence Committee and Armed Services Committee reconciled differences in the bills amicably and professionally, with the equities of both committees in mind.

The unclassified fiscal year 2004 intelligence bill contains reasonable new management and national security authorities for the intelligence community.

For example, section 311 will give the intelligence community additional flexibility to act quickly to meet higher priority needs by eliminating the ''unforeseen requirements'' criterion for reprogrammings.

Section 312 of the bill accounts for increased construction costs by raising (but not eliminating) the thresholds for notification to Congress on certain intelligence community construction and renovation projects and by shortening or removing the waiting period for beginning urgent or emergency projects.

Section 315 would set up a program to cultivate and encourage college students to become intelligence analysts. Good analysts do not grow on trees. As the intelligence community fights the war on terrorism, good language and area specialists are more important than ever.

The bill also creates a series of ''one-time'' reporting requirements in critical areas. Many of these reports will form the basis for committee efforts to address the concerns outlined in the report of the joint inquiry into the attacks of September 11. For example, we require reports on the following topics: The threat that ''cleared insiders'' like Robert Hanssen pose to classified computer networks; the adequacy and future direction of U.S. Government security investigations and clearance procedures; the creation of a ''community of intelligence experts'' by transferring civilian intelligence personnel among all elements of the intelligence community; the modifications to law and policy necessary to facilitate intelligence sharing; the strategic planning by the Director of Central Intelligence and Secretary of Defense with respect to the intelligence community; and the growing dependence by the United States on computer hardware and software manufactured overseas.

Two of the reporting requirements deal with Iraq.

Section 337 requires a report to the Congress on Intelligence lessons learned in Iraq—similar to a provision in the current House intelligence bill. Section 338 of the bill requires a report on the conventional arms and ammunition acquired by Saddam Hussein in violation of U.N. sanctions. Given the subject matter, these reports will also be made available to the Senate Foreign Relations and House International Relations Committees.

Section 339 reduces burdens on the intelligence community and reconciles oversight priorities by repealing a number of recurring reporting requirements relating to intelligence activities. Reviewing reporting requirements and clearing out the cobwebs is a healty exercise for any committee.

In title IV of the bill, there are notable ''CIA-specific'' provisions.

Section 401 removes the ''prior notification'' requirement for a limited category of CIA ''quality of life'' benefits that have already been authorized by law for members of the Foreign Service. It does not disturb advance notification requirements for agency-unique benefits adopted under the CIA Act.

Section 402 affords tort immunity benefits to CIA security protective officers (SPOs) and protective detail personnel designated by the DCI to protect certain agency employees, defectors, their immediate families, and other persons in the U.S. under CIA auspices. The provision would afford to SPOs and protective details the same protection against liability for assault, battery, false arrest, negligence, and other common law torts that certain law enforcement and Diplomatic Security Service officers enjoy already.

Section 404 of our bill is a technical amendment to the recently passed Federal Information Security Management Act (FISMA) of 2002. The FISMA amendment permits inspector generals authorized by laws other than the Inspector General Act, such as the CIA inspector general, to perform security evaluations on information systems at their respective agencies.

Title V of the bill contains provisions related to intelligence community elements residing in DOD.

Section 501 of the bill would exempt certain National Security Agency operational files from disclosure under the Freedom of Information Act and is identical to the provision recently approved by the Senate in the Defense Authorization bill.

Section 503 allows designated NSA security officers to carry firearms while on official duty to protect NSA employees and property in the U.S. This provision would provide virtually identical protections to those in Section 402 for CIA security protective officers.

Turning to the budget, when we began to review the President's fiscal year 2004 request, I became very concerned at the recent growth in intelligence funding.

There is clearly not enough money in future years to fully fund the intelligence programs in this year's budget request. That is the sad reality of this budget. The intelligence community is stretched thin, with far more requirements than available funds. Too many projects and activities have been started that cannot be accommodated in the top line. It does not matter what caused this problem. The problem exists.

A significant issue that must be addressed by the executive branch is the manner in which cost estimates for the procurement of major intelligence community systems are conducted. The magnitude and consistency in the cost growth on recent acquisitions indicates a systemic intelligence community bias to underestimate the cost of major systems.

This ''perceived affordability'' creates difficulties in the out hears as the National Foreign Intelligence Program becomes burdened with content that is more costly than the budgeted funding. This underestimation of future costs has resulted in significant reshuffling of the NFIP to meet emerging shortfalls.

Unless there is a dramatic and sustained increase in the intelligence budget, we face some hard choices. My colleagues and I decided that there is no time like the present to make them. In the reported bill, we have made an effort to address some of the shortfalls that came to light as a result of the joint inquiry into the September 11 attacks. In this bill, the committee tries to emphasize programs which begin to correct those deficiencies.

We also sought to support the war on terrorism by supporting related intelligence community programs. We try, in this measure, to accelerate advanced technology programs to provide better intelligence in the future. In the managers' amendment, we would statutorily mandate a fundamentally more sound approach to cost estimates for major systems.

In short, the committee made some tough choices. It is our hope that some of the additional programs we were forced to cut can be funded through alternative means.

In closing, we have vetted and prepared a managers' amendment that reflects a number of additional items which Senator ROCKEFELLER and I recommend for Senate passage in this bill. we have included some highly technical corrections to the bill and have worked to address concerns expressed by some Members regarding the committee's attempt to relieve the intelligence community from burdensome and dated reporting requirements.

We have also added several substantive provisions, based on supporting materials supplied by the administration and further investigation by the committee staff. Our amendments would: create a one-time report to examine the analytic arm of the Department of Homeland Security and the interaction between the Department and the Terrorist Threat Integration Center (TTIC); require the preparation and submission of independent

cost estimates to accompany budget requests for major systems acquisitions over $500,000,000, and require the preparation of budgets consistent with these estimates; help prevent money laundering by ensuring ex parte and in camera review by the presiding judge of classified information used to identify jurisdictions, institutions, transactions, and accounts that are of primary money laundering concern; and permit Central Intelligence Agency employees in the compensation reform pilot program to contribute bonus pay to their Thrift Savings Plan—an added incentive for exceptional performers.

The committee staff and I will provide any member additional information concerning any of the provisions or programs in the intelligence bill. Again, I urge my colleagues to support the bill.

Mr. ROCKEFELLER. Mr. President, I am pleased to join the distinguished chairman of the Select Committee on Intelligence in presenting S. 1025, the proposed Intelligence Authorization Act for fiscal year 2004, which will begin on October 1, 2003. I would like to join the chairman in noting the bipartisan manner in which the committee approaches its legislative work, and congratulate him for his leadership in maintaining that tradition.

The bill has two main functions.

First, the bill authorizes the appropriation of funds for the intelligence and intelligence-related activities of the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the FBI, and other intelligence elements of the U.S. Government. For the first time, the intelligence component of the Department of Homeland Security is included in the annual intelligence authorization. The actual appropriation of funds, of course, must be made in separate appropriation legislation that will follow, within the parameters set by this authorization legislation.

Second, the bill establishes or amends legal authority for the intelligence community or directs the preparation of reports by the Director of Central Intelligence or heads of components of the intelligence community.

The classified nature of United States intelligence activities prevents us from disclosing publicly the details of our budgetary recommendations. Accordingly, nearly all our budgetary recommendations are in a classified annex. The annex is available to all Members of the Senate, either at the Intelligence Committee or S–407 in the Capitol.

Ten years ago this November, I joined a majority of Senate colleagues in voting to express the sense of Congress that the aggregate amount requested, authorized, and spent for intelligence and intelligence-related activities should be disclosed to the public in an appropriate manner. The House opposed the provision.

I continue to believe we should find a means, consistent with national security, of sharing with the American taxpayer information about the total amount, although not the details, of our intelligence spending. One reason is illustrated by this year's intelligence authorization report in the House. The House committee found that the U.S. intelligence community has been recovering from cutbacks in budgets, personnel, and capabilities that followed the cold war. But how can the American people know, in a timely way, not years later, when there are cutbacks? How can they make their opinions known unless the President and Congress give them basic information on the overall size of the intelligence budget? Further, in holding the intelligence community accountable for performance, citizens should know the Nation's overall investment in intelligence.

We are on the threshold of important decisions about the future of the U.S. intelligence community. Last week's 911 report of the congressional intelligence committees has shed additional light on major problems of U.S. intelligence before the terrorist attacks of September 11. As it works toward its final report next year, the independent National Commission on Terrorist Attacks Upon the United States, building on the foundation laid by the joint inquiry, will be adding information and insights. And the Senate and House Intelligence Committees each are in the midst of extensive examinations of U.S. intelligence on Iraq.

It is fair to say, I believe, that rarely before have we had as much information about the performance of U.S. intelligence. With that knowledge comes a responsibility, for the intelligence committees, Congress as a whole, the intelligence community, and the President, to complete the improvements that the facts show are required. But we do not have the luxury to wait for further reports to begin reforms. Al-Qaida and other terrorist organizations cannot be expected to take a holiday while additional studies are done, and so we must take critical initial steps now.

The need for improving information sharing and the need for enhancing intelligence community analyses were high among the recommendations of the joint 911 inquiry.

Last November, the Congress took a key step in improving information sharing in establishing, in the Department of Homeland Security, a Directorate for Information Analysis and Infrastructure Protection. Last month, on the favorable recommendation of our committee, the Senate confirmed retired Marine Corps General Frank Libutti to be Under Secretary in charge of that Directorate. As set forth in the Homeland Security Act, he is to have access to law enforcement, intelligence information, and other information from Federal, State, and local agencies, and is to integrate that information to identify terrorist threats to the U.S. homeland. The President took a further and somewhat different step in integrating threat information, in ordering this past January the establishment of a Terrorist Threat Integration Center under the Director of Central Intelligence.

The successful integration of terrorism threat information—including ensuring that terrorism threat matters do not fall between a crack between the Homeland Security Directorate established by Congress and the Center established by the President, is a great organizational challenge facing the intelligence community this year. Our managers' amendment calls for a comprehensive report on the operations of the Homeland Security Directorate and the Terrorist Threat Integration Center. The Congress should use that information as a basis for vigorous oversight and further legislation if needed.

Our need to integrate information is not limited to terrorism threats. It extends across the spectrum of U.S. intelligence. To that end, section 314 directs the Director of Central Intelligence to carry out a pilot program on the advisability of permitting intelligence analysis of various elements of the intelligence community to access and analyze intelligence from the databases of other elements of the intelligence community. Our bill requires that the program include National Security Agency signals intelligence, but also authorizes the Director of Central Intelligence to extend it to other intelligence units. The program is to enhance the intelligence community's capacity for ''all source fusion'' analysis in support of its functions. The Director of Central Intelligence and the Secretary of Defense are to assess the pilot program and report to Congress.

Another provision, section 334, will start a process for Presidential review, and then congressional consideration, of policies and regulations that may impede sharing, for national and homeland security purposes, of classified information among Federal agencies, and between them and State and local governments or the private sector.

To increase the number of trained intelligence analysis, section 315 directs the Director of Central Intelligence to carry out and report to Congress on a pilot program on the feasibility and advisability of preparing selected students, through a program similar to the Department of Defense's Reserve Officers' Training Corps, for employment as intelligence analysts.

Greater integration in the intelligence community is an imperative that goes beyond information sharing and analysis. Another long-term objective of the bill, set forth in section 335, is to improve coordination between the Department of Defense and the intelligence community concerning strategic and budgetary planning. With the growing importance of intelligence to military operations, the Department of Defense should recognize the contribution the Director of Central Intelligence can make in the development of national military strategy.

Three sections of our bill address important information security and counterintelligence issues.

Section 331 addresses the danger posed by disloyal cleared insiders who have access to vulnerable computers and computer systems, as exemplified in the Brian Regan and Robert Hanssen espionage cases. The bill directs the submission of a report by the Director of Central Intelligence and the Secretary of Defense which describes in detail what steps are being taken to eliminate these threats, including any budget requirements to address shortfalls.

Section 332 calls for a report on security clearance procedures in the Federal Government. Our report notes that most publicly known instances of foreign espionage in the United States have involved persons who legitimately obtained clearances before deciding to betray our country. The committee has identified as a subject for assessment, the relative risks of disloyalty before clearance and after clearance. We need to learn from the experience of past betrayals. Accordingly, the committee is asking that a joint report of the Director of Central Intelligence and Secretary of Defense recommend how background investigations might in the future be better targeted to historically verifiable counterintelligence vulnerabilities.

Section 336 addressed a further security vulnerability, namely, the extent of the dependence of the United States on computer hardware or software manufactured overseas. Our report notes that most leading suppliers of hardware and software to the United States are countries that the FBI indicates are engaged in economic espionage against us. Section 336 would direct the Director of Central Intelligence to submit a report to assist Congress in developing policies that address this new vulnerability.

Finally, I would like to make an observation about our committee's future work on intelligence legislation. There are important issues identified by the joint 9/11 inquiry, including fundamental ones about the leadership of the intelligence community, that must be on our agenda for future action.

The joint inquiry recommended that Congress establish a Director of National Intelligence who, in addition to being the President's principal adviser on intelligence, shall have the management, budgetary, and personnel powers needed to make the entire U.S. intelligence community operate as a coherent whole. The joint inquiry recommended that in order to ensure this leadership, Congress should require that no person may simultaneously serve as both the Director of National Intelligence and as CIA Director or as the director of any other specific intelligence agency. Earlier this year, a member of our committee, Senator FEINSTEIN, introduced legislation on that subject. And Senator GRAHAM has now introduced legislation, which I am privileged to cosponsor, that includes Senator FEINSTEIN's bill as part of a comprehensive measure to implement the recommendations of the joint inquiry.

Our Committee's present bill is a good downpayment on the reforms that we should be considering in the time ahead. I urge both the passage of the intelligence authorization bill as well as renewal of our commitment to work together on the continuing task of improving our intelligence community.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Armed Services Committee amendments be agreed to and considered as original text for the purpose of further amendment; that the managers' amendment be agreed to; that the bill, as amended, be read a third time; that the Senate then proceed to Calendar No. 184, H.R. 2417, the House companion, that all after the enacting clause be stricken and the text of S. 1025, as amended, be inserted; that the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

In addition, I ask unanimous consent that the Senate insist upon its amendments and request a conference with the House.

I ask unanimous consent that the Chair be authorized to appoint conferees from the Intelligence Committee; further, that the Chair appoint conferees from the Armed Services Committee in the ratio of 1 to 1 for matters that fall within their jurisdiction.

Further, I ask consent that S. 1025 be returned to the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

The amendment (No. 1538) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (S. 1025), as amended, was read the third time.

The bill (H.R. 2417), as amended, was read the third time and passed, as follows:

H.R. 2417

Resolved, That the bill from the House of Representatives (H.R. 2417) entitled ''An Act to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Intelligence Authorization Act for Fiscal Year 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations.
Sec. 102. Classified schedule of authorizations.
Sec. 103. Personnel ceiling adjustments.
Sec. 104. Intelligence Community Management Account.
Sec. 105. Incorporation of reporting requirements.
Sec. 106. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense or Department of Energy.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

Subtitle A—Recurring General Provisions

Sec. 301. Increase in employee compensation and benefits authorized by law.
Sec. 302. Restriction on conduct of intelligence activities.

Subtitle B—Intelligence

Sec. 311. Modification of authority to obligate and expend certain funds for intelligence activities.
Sec. 312. Modification of notice and wait requirements on projects to construct or improve intelligence community facilities.
Sec. 313. Pilot program on analysis of signals and other intelligence by intelligence analysts of various elements of the intelligence community.
Sec. 314. Pilot program on training for intelligence analysts.
Sec. 315. Extension of National Commission for the Review of the Research and Development Programs of the United States Intelligence Community.
Sec. 316. Budget treatment of costs of acquisition of major systems by the intelligence community.

Subtitle C—Surveillance

Sec. 321. Clarification and modification of sunset of surveillance-related amendments made by USA PATRIOT ACT of 2001.

Subtitle D—Reports

Sec. 331. Report on cleared insider threat to classified computer networks.
Sec. 332. Report on security background investigations and security clearance procedures of the Federal Government.
Sec. 333. Report on detail of civilian intelligence personnel among elements of the intelligence community and the Department of Defense.
Sec. 334. Report on modifications of policy and law on classified information to facilitate sharing of information for national security purposes.
Sec. 335. Report of Secretary of Defense and Director of Central Intelligence on strategic planning.
Sec. 336. Report on United States dependence on computer hardware and software manufactured overseas.
Sec. 337. Report on lessons learned from military operations in Iraq.
Sec. 338. Reports on conventional weapons and ammunition obtained by Iraq in violation of certain United Nations Security Council resolutions.
Sec. 339. Repeal of certain report requirements relating to intelligence activities.
Sec. 340 Report on operations of Directorate of Information Analysis and Infrastructure Protection and Terrorist Threat Integration Center.

Subtitle E—Other Matters

Sec. 351. Extension of suspension of reorganization of Diplomatic Telecommunications Service Program Office.

Sec. 352. Modifications of authorities on explosive materials.
Sec. 353. Modification of prohibition on the naturalization of certain persons.
Sec. 354. Modification to definition of financial institution in the Right to Financial Privacy Act.
Sec. 355. Coordination of Federal Government research on security evaluations.
Sec. 356. Technical amendments.
Sec. 357. Treatment of classified information in money laundering cases.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

Sec. 401. Amendment to certain Central Intelligence Agency Act of 1949 notification requirements.
Sec. 402. Protection of certain Central Intelligence Agency personnel from tort liability.
Sec. 403. Repeal of obsolete limitation on use of funds in Central Services Working Capital Fund.
Sec. 404. Technical amendment to Federal Information Security Management Act of 2002.
Sec. 405. Contribution by Central Intelligence Agency employees of certain bonus pay to Thrift Savings Plan accounts.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

Sec. 501. Protection of operational files of the National Security Agency.
Sec. 502. Protection of certain National Security Agency personnel from tort liability.
Sec. 503. Use of funds for counterdrug and counterterrorism activities for Colombia.
Sec. 504. Scene visualization technologies.

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2004 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The National Reconnaissance Office.
(11) The National Imagery and Mapping Agency.
(12) The Coast Guard.
(13) The Department of Homeland Security.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2004, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill ____ of the One Hundred Eighth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2004 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall promptly notify the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives whenever the Director exercises the authority granted by this section.

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of Central Intelligence for fiscal year 2004 the sum of $198,390,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2005.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 310 full-time personnel as of September 30, 2004. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2004 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for research and development shall remain available until September 30, 2005.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2004, there are also authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2004 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a non-reimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), $37,090,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2005, and funds provided for procurement purposes shall remain available until September 30, 2006.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

SEC. 105. INCORPORATION OF REPORTING REQUIREMENTS.

(a) IN GENERAL.—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill ____ of the One Hundred Eighth Congress, or in the classified annex to this Act, is hereby incorporated into this Act, and is hereby made a requirement in law.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 106. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE OR DEPARTMENT OF ENERGY.

(a) CONSULTATION IN PREPARATION.—(1) The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations referred to in section 102(a) or the classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or the Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

(2) The Secretary of Defense or the Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or the Department of Energy, as the case may be, designated by such Secretary for that purpose.

(b) SUBMITTAL.—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

(1) The Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate.

(2) The Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2004 the sum of $226,400,000.

TITLE III—GENERAL PROVISIONS

Subtitle A—Recurring General Provisions

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority

for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

Subtitle B—Intelligence

SEC. 311. MODIFICATION OF AUTHORITY TO OBLIGATE AND EXPEND CERTAIN FUNDS FOR INTELLIGENCE ACTIVITIES.

Section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)) is amended—

(1) by inserting ''and'' at the end of subparagraph (A);

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

SEC. 312. MODIFICATION OF NOTICE AND WAIT REQUIREMENTS ON PROJECTS TO CONSTRUCT OR IMPROVE INTELLIGENCE COMMUNITY FACILITIES.

(a) INCREASE OF THRESHOLDS FOR NOTICE.—Subsection (a) of section 602 of the Intelligence Authorization Act for Fiscal Year 1995 (Public Law 103–359; 108 Stat. 3432; 50 U.S.C. 403–2b(a)) is amended—

(1) by striking ''$750,000'' each place it appears and inserting ''$5,000,000''; and

(2) by striking ''$500,000'' each place it appears and inserting ''$1,000,000''.

(b) NOTICE AND WAIT REQUIREMENTS FOR EMERGENCY PROJECTS.—Subsection (b)(2) of that section is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(2) by inserting ''(A)'' after ''(2) REPORT.—'';

(3) by striking ''21-day period'' and inserting ''7-day period''; and

(4) by adding at the end the following new subparagraph:

''(B) Notwithstanding subparagraph (A), a project referred to in paragraph (1) may begin on the date the notification is received by the appropriate committees of Congress under that paragraph if the Director of Central Intelligence and the Secretary of Defense jointly determine that—

''(i) an emergency exists with respect to the national security or the protection of health, safety, or environmental quality; and

''(ii) any delay in the commencement of the project would harm any or all of those interests.''.

SEC. 313. PILOT PROGRAM ON ANALYSIS OF SIGNALS AND OTHER INTELLIGENCE BY INTELLIGENCE ANALYSTS OF VARIOUS ELEMENTS OF THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—The Director of Central Intelligence shall, in coordination with the Secretary of Defense, carry out a pilot program to assess the feasibility and advisability of permitting intelligence analysts of various elements of the intelligence community to access and analyze intelligence from the databases of other elements of the intelligence community in order to achieve the objectives set forth in subsection (c).

(b) COVERED INTELLIGENCE.—The intelligence to be analyzed under the pilot program under subsection (a) shall include the following:

(1) Signals intelligence of the National Security Agency.

(2) Such intelligence of other elements of the intelligence community as the Director shall select for purposes of the pilot program.

(c) OBJECTIVES.—The objectives set forth in this subsection are as follows:

(1) To enhance the capacity of the intelligence community to undertake so-called ''all source fusion'' analysis in support of the intelligence and intelligence-related missions of the intelligence community.

(2) To reduce, to the extent practicable, the amount of intelligence collected by the intelligence community that is not assessed, or reviewed, by intelligence analysts.

(3) To reduce the burdens imposed on analytical personnel of the elements of the intelligence community by current practices regarding the sharing of intelligence among elements of the intelligence community.

(d) COMMENCEMENT.—The Director shall commence the pilot program under subsection (a) not later than December 31, 2003.

(e) VARIOUS MECHANISMS REQUIRED.—In carrying out the pilot program under subsection (a), the Director shall develop and utilize various mechanisms to facilitate the access to, and the analysis of, intelligence in the databases of the intelligence community by intelligence analysts of other elements of the intelligence community, including the use of so-called ''detailees in place''.

(f) SECURITY.—(1) In carrying out the pilot program under subsection (a), the Director shall take appropriate actions to protect against the disclosure and unauthorized use of intelligence in the databases of the elements of the intelligence community which may endanger sources and methods which (as determined by the Director) warrant protection.

(2) The actions taken under paragraph (1) shall include the provision of training on the accessing and handling of information in the databases of various elements of the intelligence community and the establishment of limitations on access to information in such databases to United States persons.

(g) ASSESSMENT.—Not later than February 1, 2004, after the commencement under subsection (d) of the pilot program under subsection (a), the Under Secretary of Defense for Intelligence and the Assistant Director of Central Intelligence for Analysis and Production shall jointly carry out an assessment of the progress of the pilot program in meeting the objectives set forth in subsection (c).

(h) REPORT.—(1) The Director of Central Intelligence shall, in coordination with the Secretary of Defense, submit to the appropriate committees of Congress a report on the assessment carried out under subsection (g).

(2) The report shall include—

(A) a description of the pilot program under subsection (a);

(B) the findings of the Under Secretary and Assistant Director as a result of the assessment;

(C) any recommendations regarding the pilot program that the Under Secretary and the Assistant Director jointly consider appropriate in light of the assessment; and

(D) any recommendations that the Director and Secretary consider appropriate for purposes of the report.

(i) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

SEC. 314. PILOT PROGRAM ON TRAINING FOR INTELLIGENCE ANALYSTS.

(a) PILOT PROGRAM REQUIRED.—(1) The Director of Central Intelligence shall carry out a pilot program to assess the feasibility and advisability of providing for the preparation of selected students for availability for employment as intelligence analysts for the intelligence and intelligence-related activities of the United States through a training program similar to the Reserve Officers' Training Corps programs of the Department of Defense.

(2) The pilot program shall be known as the Intelligence Community Analyst Training Program.

(b) ELEMENTS.—In carrying out the pilot program under subsection (a), the Director shall establish and maintain one or more cadres of students who—

(1) participate in such training as intelligence analysts as the Director considers appropriate; and

(2) upon completion of such training, are available for employment as intelligence analysts under such terms and conditions as the Director considers appropriate.

(c) DURATION.—The Director shall carry out the pilot program under subsection (a) during fiscal years 2004 through 2006.

(d) LIMITATION ON NUMBER OF MEMBERS DURING FISCAL YEAR 2004.—The total number of individuals participating in the pilot program under subsection (a) during fiscal year 2004 may not exceed 150 students.

(e) RESPONSIBILITY.—The Director shall carry out the pilot program under subsection (a) through the Assistant Director of Central Intelligence for Analysis and Production.

(f) REPORTS.—(1) Not later than 120 days after the date of the enactment of this Act, the Director shall submit to Congress a preliminary report on the pilot program under subsection (a), including a description of the pilot program and the authorities to be utilized in carrying out the pilot program.

(2) Not later than one year after the commencement of the pilot program, the Director shall submit to Congress a report on the pilot program. The report shall include—

(A) a description of the activities under the pilot program, including the number of individuals who participated in the pilot program and the training provided such individuals under the pilot program;

(B) an assessment of the effectiveness of the pilot program in meeting the purpose of the pilot program; and

(C) any recommendations for additional legislative or administrative action that the Director considers appropriate in light of the pilot program.

(g) FUNDING.—Of the amounts authorized to be appropriated by this Act, $8,000,000 shall be available in fiscal year 2004 to carry out this section.

SEC. 315. EXTENSION OF NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.

Section 1007(a) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2442; 50 U.S.C. 401 note) is amended by striking ''September 1, 2003,'' and inserting ''September 1, 2004,''.

SEC. 316. BUDGET TREATMENT OF COSTS OF ACQUISITION OF MAJOR SYSTEMS BY THE INTELLIGENCE COMMUNITY.

(a) FINDINGS.—Congress makes the following findings:

(1) Funds within the National Foreign Intelligence Program often must be shifted from program to program and from fiscal year to fiscal year to address funding shortfalls caused by significant increases in the costs of acquisition of major systems by the intelligence community.

(2) While some increases in the costs of acquisition of major systems by the intelligence community are unavoidable, the magnitude of growth in the costs of acquisition of many major systems indicates a systemic bias within the intelligence community to underestimate the costs of such acquisition, particularly in the preliminary stages of development and production.

(3) Decisions by Congress to fund the acquisition of major systems by the intelligence community rely significantly upon initial estimates of the affordability of acquiring such major systems and occur within a context in which funds can be allocated for a variety of alternative programs. Thus, substantial increases in costs of acquisition of major systems place significant burdens on the availability of funds for other programs and new proposals within the National Foreign Intelligence Program.

(4) Independent cost estimates, prepared by independent offices, have historically represented a more accurate projection of the costs of acquisition of major systems.

(5) Recognizing the benefits associated with independent cost estimates for the acquisition of major systems, the Secretary of Defense has built upon the statutory requirement in section 2434 of title 10, United States Code, to develop

and consider independent cost estimates for the acquisition of such systems by mandating the use of such estimates in budget requests of the Department of Defense.

(6) The mandatory use throughout the intelligence community of independent cost estimates for the acquisition of major systems will assist the President and Congress in the development and funding of budgets which more accurately reflect the requirements and priorities of the United States Government for intelligence and intelligence-related activities.

(b) BUDGET TREATMENT OF COSTS OF ACQUISITION OF MAJOR SYSTEMS.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by inserting after section 506 the following new section:

''BUDGET TREATMENT OF COSTS OF ACQUISITION OF MAJOR SYSTEMS BY THE INTELLIGENCE COMMUNITY

''SEC. 506A. (a) INDEPENDENT COST ESTIMATES.—(1) The Director of Central Intelligence shall, in consultation with the head of each element of the intelligence community concerned, prepare an independent cost estimate of the full life-cycle cost of development, procurement, and operation of each major system to be acquired by the intelligence community.

''(2) Each independent cost estimate for a major system shall, to the maximum extent practicable, specify the amount required to be appropriated and obligated to develop, procure, and operate the major system in each fiscal year of the proposed period of development, procurement, and operation of the major system.

''(3)(A) In the case of a program of the intelligence community that qualifies as a major system, an independent cost estimate shall be prepared before the submission to Congress of the budget of the President for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of such major system.

''(B) In the case of a program of the intelligence community for which an independent cost estimate was not previously required to be prepared under this section, including a program for which development or procurement commenced before the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2004, if the aggregate future costs of development or procurement (or any combination of such activities) of the program will exceed $500,000,000 (in current fiscal year dollars), the program shall qualify as a major system for purposes of this section, and an independent cost estimate for such major system shall be prepared before the submission to Congress of the budget of the President for the first fiscal year thereafter in which appropriated funds are anticipated to be obligated for such major system.

''(4) The independent cost estimate for a major system shall be updated upon—

''(A) the completion of any preliminary design review associated with the major system;

''(B) any significant modification to the anticipated design of the major system; or

''(C) any change in circumstances that renders the current independent cost estimate for the major system inaccurate.

''(5) Any update of an independent cost estimate for a major system under paragraph (4) shall meet all requirements for independent cost estimates under this section, and shall be treated as the most current independent cost estimate for the major system until further updated under that paragraph.

''(b) PREPARATION OF INDEPENDENT COST ESTIMATES.—(1) The Director shall establish within the Office of the Deputy Director of Central Intelligence for Community Management an office which shall be responsible for preparing independent cost estimates, and any updates thereof, under subsection (a), unless a designation is made under paragraph (2).

''(2) In the case of the acquisition of a major system for an element of the intelligence community within the Department of Defense, the Director and the Secretary of Defense shall provide that the independent cost estimate, and any updates thereof, under subsection (a) be prepared by an entity jointly designated by the Director and the Secretary in accordance with section 2434(b)(1)(A) of title 10, United States Code.

''(c) UTILIZATION IN BUDGETS OF PRESIDENT.—If the budget of the President requests appropriations for any fiscal year for the development or procurement of a major system by the intelligence community, the President shall request in such budget an amount of appropriations for the development or procurement, as the case may be, of the major system that is equivalent to the amount of appropriations identified in the most current independent cost estimate for the major system for obligation for each fiscal year for which appropriations are requested for the major system in such budget.

''(d) INCLUSION OF ESTIMATES IN BUDGET JUSTIFICATION MATERIALS.—The budget justification materials submitted to Congress in support of the budget of the President shall include the most current independent cost estimate under this section for each major system for which appropriations are requested in such budget for any fiscal year.

''(e) DEFINITIONS.—In this section:

''(1) The term 'budget of the President' means the budget of the President for a fiscal year as submitted to Congress under section 1105(a) of title 31, United States Code.

''(2) The term 'independent cost estimate' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with the acquisition of a major system, which shall be based on programmatic and technical specifications provided by the office within the element of the intelligence community with primary responsibility for the development, procurement, or operation of the major system.

''(3) The term 'major system' means any significant program of an element of the intelligence community with projected total development and procurement costs exceeding $500,000,000 (in current fiscal year dollars), which costs shall include all end-to-end program costs, including costs associated with the development and procurement of the program and any other costs associated with the development and procurement of systems required to support or utilize the program.''.

(c) CLERICAL AMENDMENT.—The table of contents for the National Security Act of 1947 is amended by inserting after the item relating to section 506 the following new item:

''Sec. 506A. Budget treatment of costs of acquisition of major systems by the intelligence community.''.

Subtitle C—Surveillance

SEC. 321. CLARIFICATION AND MODIFICATION OF SUNSET OF SURVEILLANCE-RELATED AMENDMENTS MADE BY USA PATRIOT ACT OF 2001.

(a) CLARIFICATION.—Section 224 of the USA PATRIOT ACT of 2001 (Public Law 107–56; 115 Stat. 295) is amended by adding at the end the following new subsection:

''(c) EFFECT OF SUNSET.—Effective on December 31, 2005, each provision of law the amendment of which is sunset by subsection (a) shall be revived so as to be in effect as such provision of law was in effect on October 25, 2001.''.

(b) MODIFICATION.—Subsection (a) of that section is amended by inserting ''204,'' after ''203(c),''.

Subtitle D—Reports

SEC. 331. REPORT ON CLEARED INSIDER THREAT TO CLASSIFIED COMPUTER NETWORKS.

(a) REPORT REQUIRED.—The Director of Central Intelligence and the Secretary of Defense shall jointly submit to the appropriate committees of Congress a report on the risks to the national security of the United States of the current computer security practices of the elements of the intelligence community and of the Department of Defense.

(b) ASSESSMENTS.—The report under subsection (a) shall include an assessment of the following:

(1) The vulnerability of the computers and computer systems of the elements of the intelligence community, and of the Department of Defense, to various threats from foreign governments, international terrorist organizations, and organized crime, including information warfare (IW), Information Operations (IO), Computer Network Exploitation (CNE), and Computer Network Attack (CNA).

(2) The risks of providing users of local area networks (LANs) or wide-area networks (WANs) of computers that include classified information with capabilities for electronic mail, upload and download, or removable storage media without also deploying comprehensive computer firewalls, accountability procedures, or other appropriate security controls.

(3) Any other matters that the Director and the Secretary jointly consider appropriate for purposes of the report.

(c) INFORMATION ON ACCESS TO NETWORKS.—The report under subsection (a) shall also include information as follows:

(1) An estimate of the number of access points on each classified computer or computer system of an element of the intelligence community or the Department of Defense that permit unsupervised uploading or downloading of classified information, set forth by level of classification.

(2) An estimate of the number of individuals utilizing such computers or computer systems who have access to input-output devices on such computers or computer systems.

(3) A description of the policies and procedures governing the security of the access points referred to in paragraph (1), and an assessment of the adequacy of such policies and procedures.

(4) An assessment of viability of utilizing other technologies (including so-called ''thin client servers'') to achieve enhanced security of such computers and computer systems through more rigorous control of access to such computers and computer systems.

(d) RECOMMENDATIONS.—The report under subsection (a) shall also include such recommendations for modifications or improvements of the current computer security practices of the elements of the intelligence community, and of the Department of Defense, as the Director and the Secretary jointly consider appropriate as a result of the assessments under subsection (b) and the information under subsection (c).

(e) SUBMITTAL DATE.—The report under subsection (a) shall be submitted not later than February 15, 2004.

(f) FORM.—The report under subsection (a) may be submitted in classified or unclassified form, at the election of the Director.

(g) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

(2) The term ''elements of the intelligence community'' means the elements of the intelligence community set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 332. REPORT ON SECURITY BACKGROUND INVESTIGATIONS AND SECURITY CLEARANCE PROCEDURES OF THE FEDERAL GOVERNMENT.

(a) REPORT REQUIRED.—The Director of Central Intelligence and the Secretary of Defense shall jointly submit to the appropriate committees of Congress a report on the utility and effectiveness of the current security background

investigations and security clearance procedures of the Federal Government in meeting the purposes of such investigations and procedures.

(b) PARTICULAR REPORT MATTERS.—In preparing the report, the Director and the Secretary shall address in particular the following:

(1) A comparison of the costs and benefits of conducting background investigations for Secret clearance with the costs and benefits of conducting full field background investigations.

(2) The standards governing the revocation of security clearances.

(c) RECOMMENDATIONS.—The report under subsection (a) shall include such recommendations for modifications or improvements of the current security background investigations or security clearance procedures of the Federal Government as the Director and the Secretary jointly consider appropriate as a result of the preparation of the report under that subsection.

(d) SUBMITTAL DATE.—The report under subsection (a) shall be submitted not later than February 15, 2004.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the House of Representatives.

SEC. 333. REPORT ON DETAIL OF CIVILIAN INTELLIGENCE PERSONNEL AMONG ELEMENTS OF THE INTELLIGENCE COMMUNITY AND THE DEPARTMENT OF DEFENSE.

(a) REPORT REQUIRED.—The Director of Central Intelligence shall, in consultation with the heads of the elements of the intelligence community, submit to the appropriate committees of Congress a report on means of improving the detail or transfer of civilian intelligence personnel between and among the various elements of the intelligence community for the purpose of enhancing the flexibility and effectiveness of the intelligence community in responding to changes in requirements for the collection, analysis, and dissemination of intelligence.

(b) REPORT ELEMENTS.—The report under subsection (a) shall—

(1) set forth a variety of proposals on means of improving the detail or transfer of civilian intelligence personnel as described in that subsection;

(2) identify the proposal or proposals determined by the heads of the elements of the intelligence community to be most likely to meet the purpose described in that subsection; and

(3) include such recommendations for such legislative or administrative action as the heads of the elements of the intelligence community consider appropriate to implement the proposal or proposals identified under paragraph (2).

(c) SUBMITTAL DATE.—The report under subsection (a) shall be submitted not later than February 15, 2004.

(d) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the House of Representatives.

(2) The term ''elements of the intelligence community'' means the elements of the intelligence community set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term ''heads of the elements of the intelligence community'' includes the Secretary of Defense with respect to each element of the intelligence community within the Department of Defense or the military departments.

SEC. 334. REPORT ON MODIFICATIONS OF POLICY AND LAW ON CLASSIFIED INFORMATION TO FACILITATE SHARING OF INFORMATION FOR NATIONAL SECURITY PURPOSES.

(a) REPORT.—Not later than four months after the date of the enactment of this Act, the President shall submit to the appropriate committees of Congress a report that—

(1) identifies impediments in current policy and regulations to the sharing of classified information horizontally across and among Federal departments and agencies, and between Federal departments and agencies and vertically to and from agencies of State and local governments and the private sector, for national security purposes, including homeland security;

(2) proposes appropriate modifications of policy, law, and regulations to eliminate such impediments in order to facilitate such sharing of classified information for homeland security purposes, including homeland security; and

(3) outlines a plan of action (including appropriate milestones and funding) to establish the Terrorist Threat Integration Center as called for in the Information on the State of the Union given by the President to Congress under section 3 of Article II of the Constitution of the United States in 2003.

(b) CONSIDERATIONS.—In preparing the report under subsection (a), the President shall—

(1) consider the extent to which the reliance on a document-based approach to the protection of classified information impedes the sharing of classified information; and

(2) consider the extent to which the utilization of a database-based approach, or other electronic approach, to the protection of classified information might facilitate the sharing of classified information.

(c) COORDINATION WITH OTHER INFORMATION SHARING ACTIVITIES.—In preparing the report under subsection (a), the President shall, to the maximum extent practicable, take into account actions being undertaken under the Homeland Security Information Sharing Act (subtitle I of title VIII of Public Law 107–296; 116 Stat. 2252; 6 U.S.C. 481 et seq.).

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Select Committee on Homeland Security, and the Committees on Armed Services and the Judiciary of the House of Representatives.

SEC. 335. REPORT OF SECRETARY OF DEFENSE AND DIRECTOR OF CENTRAL INTELLIGENCE ON STRATEGIC PLANNING.

(a) REPORT.—Not later than February 15, 2004, the Secretary of Defense and the Director of Central Intelligence shall jointly submit to the appropriate committees of Congress a report that assesses progress in the following:

(1) The development by the Department of Defense and the intelligence community of a comprehensive and uniform analytical capability to assess the utility and advisability of various sensor and platform architectures and capabilities for the collection of intelligence.

(2) The improvement of coordination between the Department and the intelligence community on strategic and budgetary planning.

(b) FORM.—The report under subsection (a) may be submitted in classified form.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

SEC. 336. REPORT ON UNITED STATES DEPENDENCE ON COMPUTER HARDWARE AND SOFTWARE MANUFACTURED OVERSEAS.

(a) REPORT.—Not later than February 15, 2004, the Director of Central Intelligence shall submit to the appropriate committees of Congress a report on the extent of United States dependence on computer hardware or software that is manufactured overseas.

(b) ELEMENTS.—The report under subsection (a) shall address the following:

(1) The extent to which the United States currently depends on computer hardware or software that is manufactured overseas.

(2) The extent to which United States dependence on such computer hardware or software is increasing.

(3) The vulnerabilities of the national security and economy of the United States as a result of United States dependence on such computer hardware or software.

(4) Any other matters relating to United States dependence on such computer hardware or software that the Director considers appropriate.

(c) CONSULTATION WITH PRIVATE SECTOR.—In preparing the report under subsection (a), the Director may consult, and is encouraged to consult, with appropriate persons and entities in the computer hardware or software industry and with other appropriate persons and entities in the private sector.

(d) FORM.—(1) The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(2) The report may be in the form of a National Intelligence Estimate.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

SEC. 337. REPORT ON LESSONS LEARNED FROM MILITARY OPERATIONS IN IRAQ.

(a) REPORT.—Not later than one year after the date of the enactment of this Act, the Director of Central Intelligence shall submit to the appropriate committees of Congress a report on the intelligence lessons learned as a result of Operation Iraqi Freedom.

(b) RECOMMENDATIONS.—The report under subsection (a) shall include such recommendations on means of improving training, equipment, operations, coordination, and collection of or for intelligence as the Director considers appropriate.

(c) FORM.—The report under subsection (a) shall be submitted in classified form.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

SEC. 338. REPORTS ON CONVENTIONAL WEAPONS AND AMMUNITION OBTAINED BY IRAQ IN VIOLATION OF CERTAIN UNITED NATIONS SECURITY COUNCIL RESOLUTIONS.

(a) PRELIMINARY REPORT.—Not later than 120 days after the date of the cessation of hostilities in Iraq (as determined by the President), the Director of the Defense Intelligence Agency shall, after such consultation with the Secretary of State and the Attorney General as the Director considers appropriate, submit to the appropriate committees of Congress a preliminary report on all information obtained by the Department of Defense and the intelligence community on the conventional weapons and ammunition obtained by Iraq in violation of applicable resolutions of

the United Nations Security Council adopted since the invasion of Kuwait by Iraq in August 1990.

(b) FINAL REPORT.—(1) Not later than 270 days after the date of the cessation of hostilities in Iraq (as so determined), the Director shall submit to the appropriate committees of Congress a final report on the information described in subsection (a).

(2) The final report under paragraph (1) shall include such updates of the preliminary report under subsection (a) as the Director considers appropriate.

(c) ELEMENTS.—Each report under this section shall set forth, to the extent practicable, with respect to each shipment of weapons or ammunition addressed in such report the following:

(1) The country of origin.

(2) Any country of transshipment.

(d) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committees on Armed Services and Foreign Relations of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committees on Armed Services and International Relations of the House of Representatives.

SEC. 339. REPEAL OF CERTAIN REPORT REQUIREMENTS RELATING TO INTELLIGENCE ACTIVITIES.

(a) ANNUAL EVALUATION OF PERFORMANCE AND RESPONSIVENESS OF INTELLIGENCE COMMUNITY.—Section 105 of the National Security Act of 1947 (50 U.S.C. 403–5) is amended by striking subsection (d).

(b) PERIODIC AND SPECIAL REPORTS ON DISCLOSURE OF INTELLIGENCE INFORMATION TO UNITED NATIONS.—Section 112 of the National Security Act of 1947 (50 U.S.C. 404g) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(c) ANNUAL REPORT ON INTELLIGENCE COMMUNITY COOPERATION WITH COUNTERDRUG ACTIVITIES.—Section 114 of the National Security Act of 1947 (50 U.S.C. 404i) is amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b) through (f) as subsections (a) through (e), respectively.

(d) ANNUAL REPORT ON COVERT LEASES.—Section 114 of the National Security Act of 1947, as amended by this section, is further amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(e) ANNUAL REPORT ON PROTECTION OF COVERT AGENTS.—Section 603 of the National Security Act of 1947 (50 U.S.C. 423) is repealed.

(f) ANNUAL REPORT ON CERTAIN FOREIGN COMPANIES INVOLVED IN PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.—Section 827 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2430; 50 U.S.C. 404n–3) is repealed.

(g) ANNUAL REPORT ON INTELLIGENCE ACTIVITIES OF PEOPLE'S REPUBLIC OF CHINA.—Section 308 of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 111 Stat. 2253; 50 U.S.C. 402a note) is repealed.

(h) ANNUAL REPORT ON COORDINATION OF COUNTERINTELLIGENCE MATTERS WITH FBI.—Section 811(c) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 50 U.S.C. 402a(c)) is amended—

(1) by striking paragraph (6); and

(2) by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(i) REPORT ON POSTEMPLOYMENT ASSISTANCE FOR TERMINATED INTELLIGENCE EMPLOYEES.—Section 1611 of title 10, United States Code, is amended by striking subsection (e).

(j) ANNUAL REPORT ON ACTIVITIES OF FBI PERSONNEL OUTSIDE THE UNITED STATES.—Section 540C of title 18, United States Code, is repealed.

(k) ANNUAL REPORT ON EXCEPTIONS TO CONSUMER DISCLOSURE REQUIREMENTS FOR NATIONAL SECURITY INVESTIGATIONS.—Section 604(b)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)) is amended—

(1) by striking subparagraphs (D) and (E); and

(2) by redesignating subparagraph (F) as subparagraph (D).

(l) CONFORMING AMENDMENTS.—Section 507 of the National Security Act of 1947 (50 U.S.C. 415b) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking subparagraphs (A), (C), (D), (G), (I), (J), and (L); and

(ii) by redesignating subparagraphs (B), (E), (F), (H), (K), (M), and (N) as subparagraphs (A), (B), (C), (D), (E), (F), and (G), respectively; and

(iii) in subparagraph (G), as so redesignated, by striking ''section 114(c)'' and inserting ''section 114(b)''.

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''section 114(b)'' and inserting ''section 114(a)'';

(ii) in subparagraph (B), by striking ''section 114(d)'' and inserting ''section 114(c)'';

(iii) by striking subparagraphs (C), (E), and (F); and

(iv) by redesignating subparagraphs (D) and (G) as subparagraphs (C) and (D), respectively; and

(2) in subsection (b)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (8) as paragraphs (1) through (7), respectively.

(m) CLERICAL AMENDMENTS.—

(1) NATIONAL SECURITY ACT OF 1947.—The table of contents for the National Security Act of 1947 is amended by striking the item relating to section 603.

(2) TITLE 18, UNITED STATES CODE.—The table of sections at the beginning of chapter 33 of title 18, United States Code, is amended by striking the item relating to section 540C.

(n) EFFECTIVE DATE.—The amendments made by this section shall take effect on December 31, 2003.

SEC. 340. REPORT ON OPERATIONS OF DIRECTORATE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION AND TERRORIST THREAT INTEGRATION CENTER.

(a) REPORT REQUIRED.—The Secretary of Homeland Security shall submit to the appropriate committees of Congress a report on the operations of the Directorate of Information Analysis and Infrastructure Protection of the Department of Homeland Security and the Terrorist Threat Integration Center. The report shall include the following:

(1) An assessment of the operations of the Directorate, including the capability of the Directorate—

(A) to meet personnel requirements, including requirements to employ qualified analysts, and the status of efforts to employ qualified analysts;

(B) to share intelligence information with the other elements of the intelligence community, including the sharing of intelligence information through secure information technology connections between the Directorate and the other elements of the intelligence community;

(C) to disseminate intelligence information, or analyses of intelligence information, to other departments and agencies of the Federal Government and, as appropriate, to State and local governments;

(D) to coordinate with State and local counterterrorism and law enforcement officials;

(E) to access information, including intelligence and law enforcement information, from the departments and agencies of the Federal Government, including the ability to access, in a timely and efficient manner, all information authorized by section 202 of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 122); and

(F) to fulfill, given the current assets and capabilities of the Directorate, the responsibilities set forth in section 201 of the Homeland Security Act of 2002 (6 U.S.C. 121);

(2) A delineation of the responsibilities and duties of the Directorate and of the responsibilities and duties of the Center.

(3) A delineation and summary of the areas in which the responsibilities and duties of the Directorate and the Center overlap.

(4) An assessment of whether the areas of overlap, if any, delineated under paragraph (3) represent an inefficient utilization of the limited resources of the Directorate and the intelligence community.

(5) Such information as the Secretary, in coordination with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, considers appropriate to explain the basis for the establishment and operation of the Center as a ''joint venture'' of participating agencies rather than as an element of the Directorate reporting directly to the Secretary through the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection.

(b) SUBMITTAL DATE.—The report required by this section shall be submitted not later than May 1, 2004.

(c) FORM.—The report required by this section shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence and the Committees on Governmental Affairs, the Judiciary, and Appropriations of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Select Committee on Homeland Security, and the Committees on the Judiciary and Appropriations of the House of Representatives.

Subtitle E—Other Matters

SEC. 351. EXTENSION OF SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

Section 311 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107–108; 22 U.S.C. 7301 note) is amended—

(1) in the heading, by striking ''***TWO-YEAR***'' before ''***SUSPENSION OF REORGANIZATION***''; and

(2) in the text, by striking ''ending on October 1, 2003'' and inserting ''ending on the date that is 60 days after the appropriate congressional committees of jurisdiction (as defined in section 324(d) of that Act (22 U.S.C. 7304(d)) are notified jointly by the Secretary of State (or the Secretary's designee) and the Director of the Office of Management and Budget (or the Director's designee) that the operational framework for the office has been terminated''.

SEC. 352. MODIFICATIONS OF AUTHORITIES ON EXPLOSIVE MATERIALS.

(a) CLARIFICATION OF ALIENS AUTHORIZED TO DISTRIBUTE EXPLOSIVE MATERIALS.—Section 842(d)(7) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B)—

(A) by inserting ''or'' at the end of clause (i); and

(B) by striking clauses (iii) and (iv); and

(3) by adding the following new subparagraphs:

''(C) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney

General in consultation with the Secretary of Defense, who is present in the United States under military orders for training or other military purpose authorized by the United States and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the authorized military purpose; or

''(D) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;''.

(b) CLARIFICATION OF ALIENS AUTHORIZED TO POSSESS OR RECEIVE EXPLOSIVE MATERIALS.—Section 842(i)(5) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B)—

(A) by inserting ''or'' at the end of clause (i); and

(B) by striking clauses (iii) and (iv); and

(3) by adding the following new subparagraphs:

''(C) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, who is present in the United States under military orders for training or other military purpose authorized by the United States and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the authorized military purpose; or

''(D) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;''.

SEC. 353. MODIFICATION OF PROHIBITION ON THE NATURALIZATION OF CERTAIN PERSONS.

Section 313(e)(4) of the Immigration and Nationality Act (8 U.S.C. 1424(e)(4)) is amended—

(1) by inserting ''when Department of Defense activities are relevant to the determination'' after ''Secretary of Defense''; and

(2) by inserting ''and the Secretary of Homeland Security'' after ''Attorney General''.

SEC. 354. MODIFICATION TO DEFINITION OF FINANCIAL INSTITUTION IN THE RIGHT TO FINANCIAL PRIVACY ACT.

The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101(1) (12 U.S.C. 3401(1)), by inserting '', except as provided in section 1114,'' before ''means any office''; and

(2) in section 1114 (12 U.S.C. 3414), by adding at the end the following:

''(c) For purposes of this section, the term 'financial institution' has the same meaning as in section 5312(a)(2) of title 31, United States Code, except that, for purposes of this section, such term shall include only such a financial institution any part of which is located inside any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the United States Virgin Islands.''.

SEC. 355. COORDINATION OF FEDERAL GOVERNMENT RESEARCH ON SECURITY EVALUATIONS.

(a) WORKSHOPS FOR COORDINATION OF RESEARCH.—The National Science Foundation and the Office of Science and Technology Policy shall jointly sponsor not less than two workshops on the coordination of Federal Government research on the use of behavioral, psychological, and physiological assessments of individuals in the conduct of security evaluations.

(b) DEADLINE FOR COMPLETION OF ACTIVITIES.—The activities of the workshops sponsored under subsection (a) shall be completed not later than March 1, 2004.

(c) PURPOSES.—The purposes of the workshops sponsored under subsection (a) are as follows:

(1) To provide a forum for cataloging and coordinating federally-funded research activities relating to the development of new techniques in the behavioral, psychological, or physiological assessment of individuals to be used in security evaluations.

(2) To develop a research agenda for the Federal Government on behavioral, psychological, and physiological assessments of individuals, including an identification of the research most likely to advance the understanding of the use of such assessments of individuals in security evaluations.

(3) To distinguish between short-term and long-term areas of research on behavioral, psychological, and physiological assessments of individuals in order maximize the utility of short-term and long-term research on such assessments.

(4) To identify the Federal agencies best suited to support research on behavioral, psychological, and physiological assessments of individuals.

(5) To develop recommendations for coordinating future federally-funded research for the development, improvement, or enhancement of security evaluations.

(d) ADVISORY GROUP.—(1) In order to assist the National Science Foundation and the Office of Science and Technology Policy in carrying out the activities of the workshops sponsored under subsection (a), there is hereby established an interagency advisory group with respect to such workshops.

(2) The advisory group shall be composed of the following:

(A) A representative of the Social, Behavioral, and Economic Directorate of the National Science Foundation.

(B) A representative of the Office of Science, and Technology Policy.

(C) The Secretary of Defense, or a designee of the Secretary.

(D) The Secretary of State, or a designee of the Secretary.

(E) The Attorney General, or a designee of the Attorney General.

(F) The Secretary of Energy, or a designee of the Secretary.

(G) The Secretary of Homeland Security, or a designee of the Secretary.

(H) The Director of Central Intelligence, or a designee of the Director.

(I) The Director of the Federal Bureau of Investigation, or a designee of the Director.

(J) The National Counterintelligence Executive, or a designee of the National Counterintelligence Executive.

(K) Any other official assigned to the advisory group by the President for purposes of this section.

(3) The members of the advisory group under subparagraphs (A) and (B) of paragraph (2) shall jointly head the advisory group.

(4) The advisory group shall provide the Foundation and the Office such information, advice, and assistance with respect to the workshops sponsored under subsection (a) as the advisory group considers appropriate.

(5) The advisory group shall not be treated as an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) REPORT.—Not later than March 1, 2004, the National Science Foundation and the Office of Science and Technology Policy shall jointly submit Congress a report on the results of activities of the workshops sponsored under subsection (a), including the findings and recommendations of the Foundation and the Office as a result of such activities.

(f) FUNDING.—(1) Of the amount authorized to be appropriated for the Intelligence Community Management Account by section 104(a), $500,000 shall be available to the National Science Foundation and the Office of Science and Technology Policy to carry out this section.

(2) The amount authorized to be appropriated by paragraph (1) shall remain available until expended.

SEC. 356. TECHNICAL AMENDMENTS.

(a) NATIONAL SECURITY ACT OF 1947.—Subsection (c)(1) of section 112 of the National Security Act of 1947, as redesignated by section 339(b) of this Act, is further amended by striking ''section 103(c)(6)'' and inserting ''section 103(c)(7)''.

(b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(1) Section 5(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(1)) is amended by striking ''(c)(6)'' each place it appears and inserting ''(c)(7)''.

(2) Section 6 of that Act (50 U.S.C. 403g) is amended by striking ''section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6))'' and inserting ''section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))''.

(2) Section 15 of that Act (50 U.S.C. 403o) is amended—

(A) in subsection (a)(1), by striking ''special policemen of the General Services Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policeman for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes'(40 U.S.C. 318),'' and inserting ''officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40, United States Code,''; and

(B) in subsection (b), by striking ''the fourth section of the Act referred to in subsection (a) of this section (40 U.S.C. 318c)'' and inserting ''section 1315(c)(2) of title 40, United States Code''.

(c) NATIONAL SECURITY AGENCY ACT OF 1959.—Section 11 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended—

(1) in subsection (a)(1), by striking ''special policemen of the General Services Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policeman for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes'(40 U.S.C. 318)'' and inserting ''officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40, United States Code,''; and

(2) in subsection (b), by striking ''the fourth section of the Act referred to in subsection (a) (40 U.S.C. 318c)'' and inserting ''section 1315(c)(2) of title 40, United States Code''.

(d) INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003.—Section 343 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2399; 50 U.S.C. 404n–2) is amended—

(1) in subsection (c), by striking ''section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6))'' and inserting ''section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))''; and

(2) in subsection (e)(2), by striking ''section 103(c)(6)'' and inserting ''section 103(c)(7)''.

(e) PUBLIC LAW 107–173.—Section 201(c)(3)(F) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173; 116 Stat. 548; 8 U.S.C. 1721(c)(3)(F)) is amended by striking ''section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6))'' and inserting ''section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))''.

SEC. 357. TREATMENT OF CLASSIFIED INFORMATION IN MONEY LAUNDERING CASES.

Section 5318A of title 31, United States Code, is amended by adding at the end the following:

''(f) CLASSIFIED INFORMATION.—In any judicial review of a finding of the existence of a primary money laundering concern, or of the requirement for 1 or more special measures with respect to a primary money laundering concern, made under this section, if the designation or imposition, or both, were based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C.

App.), such information may be submitted by the Secretary to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review of any finding made or required under this section.''.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. AMENDMENT TO CERTAIN CENTRAL INTELLIGENCE AGENCY ACT OF 1949 NOTIFICATION REQUIREMENTS.

Section 4(b)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403e(b)(5)) is amended inserting '', other than regulations under paragraph (1),'' after ''Regulations''.

SEC. 402. PROTECTION OF CERTAIN CENTRAL INTELLIGENCE AGENCY PERSONNEL FROM TORT LIABILITY.

Section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o) is amended by adding at the end the following new subsection:

''(d)(1) Notwithstanding any other provision of law, any Agency personnel designated by the Director under subsection (a), or designated by the Director under section 5(a)(4) to carry firearms for the protection of current or former Agency personnel and their immediate families, defectors and their immediate families, and other persons in the United States under Agency auspices, shall be considered for purposes of chapter 171 of title 28, United States Code, or any other provision of law relating to tort liability, to be acting within the scope of their office or employment when such Agency personnel take reasonable action, which may include the use of force, to—

''(A) protect an individual in the presence of such Agency personnel from a crime of violence;

''(B) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or

''(C) prevent the escape of any individual whom such Agency personnel reasonably believe to have committed a crime of violence in the presence of such Agency personnel.

''(2) Paragraph (1) shall not affect the authorities of the Attorney General under section 2679(d)(1) of title 28, United States Code.

''(3) In this subsection, the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code.''.

SEC. 403. REPEAL OF OBSOLETE LIMITATION ON USE OF FUNDS IN CENTRAL SERVICES WORKING CAPITAL FUND.

Section 21(f)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(f)(2)) is amended—

(1) in subparagraph (A), by striking ''(A) Subject to subparagraph (B), the Director'' and inserting ''The Director''; and

(2) by striking subparagraph (B).

SEC. 404. TECHNICAL AMENDMENT TO FEDERAL INFORMATION SECURITY MANAGEMENT ACT OF 2002.

Section 3535(b)(1) of title 44, United States Code, as added by section 1001(b)(1) of the Homeland Security Act of 2002 (Public Law 107–296), and section 3545(b)(1) of title 44, United States Code, as added by section 301(b)(1) of the E–Government Act of 2002 (Public Law 107–347), are each amended by inserting ''or any other law'' after ''1978''.

SEC. 405. CONTRIBUTION BY CENTRAL INTELLIGENCE AGENCY EMPLOYEES OF CERTAIN BONUS PAY TO THRIFT SAVINGS PLAN ACCOUNTS.

(a) CSRS PARTICIPANTS.—Section 8351(d) of title 5, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following new paragraph:

''(2)(A) An employee of the Central Intelligence Agency making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2403; 50 U.S.C. 403–4 note).

''(B) Contributions under this paragraph are subject to section 8432(d) of this title.''.

(b) FERS PARTICIPANTS.—Section 8432 of title 5, United States Code, is amended by adding at the end the following new subsection:

''(k)(1) An employee of the Central Intelligence Agency making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2403; 50 U.S.C. 403–4 note).

''(2) Contributions under this subsection are subject to subsection (d).

''(3) For purposes of subsection (c), basic pay of an employee of the Central Intelligence Agency shall include bonus pay received by the employee as part of the pilot project referred to in paragraph (1).''.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

SEC. 501. PROTECTION OF OPERATIONAL FILES OF THE NATIONAL SECURITY AGENCY.

(a) CONSOLIDATION OF CURRENT PROVISIONS ON PROTECTION OF OPERATIONAL FILES.—The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by transferring sections 105C and 105D to the end of title VII and redesignating such sections, as so transferred, as sections 703 and 704, respectively.

(b) PROTECTION OF OPERATIONAL FILES OF NSA.—Title VII of such Act, as amended by subsection (a), is further amended by adding at the end the following new section:

''OPERATIONAL FILES OF THE NATIONAL SECURITY AGENCY

''SEC. 705. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) Operational files of the National Security Agency (hereafter in this section referred to as 'NSA') may be exempted by the Director of NSA, in coordination with the Director of Central Intelligence, from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

''(2)(A) In this section, the term 'operational files' means—

''(i) files of the Signals Intelligence Directorate, and its successor organizations, which document the means by which foreign intelligence or counterintelligence is collected through technical systems; and

''(ii) files of the Research Associate Directorate, and its successor organizations, which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

''(B) Files which are the sole repository of disseminated intelligence, and files that have been accessioned into NSA Archives, or its successor organizations, are not operational files.

''(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

''(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code;

''(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code; or

''(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

''(i) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

''(ii) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

''(iii) The Intelligence Oversight Board.

''(iv) The Department of Justice.

''(v) The Office of General Counsel of NSA.

''(vi) The Office of the Inspector General of the Department of Defense.

''(vii) The Office of the Director of NSA.

''(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

''(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

''(C) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.

''(D) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1), and which have been returned to exempted operational files for sole retention shall be subject to search and review.

''(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2004, and which specifically cites and repeals or modifies such provisions.

''(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NSA has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

''(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

''(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NSA, such information shall be examined ex parte, in camera by the court.

''(ii) The court shall determine, to the fullest extent practicable, the issues of fact based on sworn written submissions of the parties.

''(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

''(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NSA shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

''(II) The court may not order NSA to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NSA's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

''(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

''(vi) If the court finds under this paragraph that NSA has improperly withheld requested

records because of failure to comply with any provision of this subsection, the court shall order NSA to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this subsection.

''(vii) If at any time following the filing of a complaint pursuant to this paragraph NSA agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

''(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence before submission to the court.

''(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of the National Security Agency and the Director of Central Intelligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from a category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

''(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of a particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

''(3) A complainant that alleges that NSA has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining the following:

''(A) Whether NSA has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2004 or before the expiration of the 10-year period beginning on the date of the most recent review.

''(B) Whether NSA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.''.

(c) CONFORMING AMENDMENTS.—(1) Section 701(b) of the National Security Act of 1947 (50 U.S.C. 431(b)) is amended by striking ''For purposes of this title'' and inserting ''In this section and section 702,''.

(2) Section 702(c) of such Act (50 U.S.C. 432(c)) is amended by striking ''enactment of this title'' and inserting ''October 15, 1984,''.

(3)(A) The title heading for title VII of such Act is amended to read as follows:

''TITLE VII—PROTECTION OF OPERATIONAL FILES''.

(B) The section heading for section 701 of such Act is amended to read as follows:

''PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY''.

(C) The section heading for section 702 of such Act is amended to read as follows:

''DECENNIAL REVIEW OF EXEMPTED CENTRAL INTELLIGENCE AGENCY OPERATIONAL FILES''.

(d) CLERICAL AMENDMENTS.—The table of contents for the National Security Act of 1947 is amended—

(1) by striking the items relating to sections 105C and 105D; and

(2) by striking the items relating to title VII and inserting the following new items:

''TITLE VII—PROTECTION OF OPERATIONAL FILES

''Sec. 701. Protection of operational files of the Central Intelligence Agency.

''Sec. 702. Decennial review of exempted Central Intelligence Agency operational files.

''Sec. 703. Protection of operational files of the National Imagery and Mapping Agency.

''Sec. 704. Protection of operational files of the National Reconnaissance Office.

''Sec. 705. Protection of operational files of the National Security Agency.''.

SEC. 502. PROTECTION OF CERTAIN NATIONAL SECURITY AGENCY PERSONNEL FROM TORT LIABILITY.

Section 11 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by adding at the end the following new subsection:

''(d)(1) Notwithstanding any other provision of law, agency personnel designated by the Director of the National Security Agency under subsection (a) shall be considered for purposes of chapter 171 of title 28, United States Code, or any other provision of law relating to tort liability, to be acting within the scope of their office or employment when such agency personnel take reasonable action, which may include the use of force, to—

''(A) protect an individual in the presence of such agency personnel from a crime of violence;

''(B) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or

''(C) prevent the escape of any individual whom such agency personnel reasonably believe to have committed a crime of violence in the presence of such agency personnel.

''(2) Paragraph (1) shall not affect the authorities of the Attorney General under section 2679(d)(1) of title 28, United States Code.

''(3) In this subsection, the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code.''.

SEC. 503. USE OF FUNDS FOR COUNTERDRUG AND COUNTERTERRORISM ACTIVITIES FOR COLOMBIA.

(a) AUTHORITY.—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities for fiscal year 2004 or 2005, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall be available—

(1) to support a unified campaign against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)); and

(2) to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.

(b) TERMINATION OF AUTHORITY.—The authority provided in subsection (a) shall cease to be effective if the Secretary of Defense has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(c) APPLICATION OF CERTAIN PROVISIONS OF LAW.—Sections 556, 567, and 568 of Public Law 107–115, section 8093 of the Department of Defense Appropriations Act, 2002, and the numerical limitations on the number of United States military personnel and United States individual civilian contractors in section 3204(b)(1) of Public Law 106–246 shall be applicable to funds made available pursuant to the authority contained in subsection (a).

(d) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self defense or rescuing any United States citizen to include United States Armed Forces personnel, United States civilian employees, and civilian contractors employed by the United States.

SEC. 504. SCENE VISUALIZATION TECHNOLOGIES.

Of the amount authorized to be appropriated by this Act, $2,500,000 shall be available for the National Imagery and Mapping Agency (NIMA) for scene visualization technologies.

HIGHER EDUCATION RELIEF OPPORTUNITIES FOR STUDENTS ACT OF 2003

Mr. SUNUNU. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of H.R. 1412, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1412) to provide the Secretary of Education with specific waiver authority to respond to a war or other military operation or national emergency.

There being no objection, the Senate proceeded to consider the bill.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the bill be read a third time and passed, that the motion to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1412) was read the third time and passed.

JAMES L. WATSON UNITED STATES COURT OF INTERNATIONAL TRADE BUILDING

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of H.R. 1018, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1018) to designate the building located at 1 Federal Plaza in New York, New York, as the ''James L. Watson United States Court of International Trade Building.''

There being no objection, the Senate proceeded to consider the bill.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the bill be read a third time and passed, that the motion to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1018) was read the third time and passed.

PROVIDING FOR ADDITIONAL SPACE AND RESOURCES FOR NATIONAL COLLECTIONS HELD BY THE SMITHSONIAN INSTITUTION

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate

proceed to the immediate consideration of H.R. 2195.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2195) to provide for additional space and resources for national collections held by the Smithsonian Institution, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, Larry Small, Secretary of the Smithsonian, has provided a letter to the majority and minority leaders that clarifies the intentions of the Smithsonian with regard to Section 5 of H.R. 2195.

I ask unanimous consent that the letter from Secretary Small concerning this clarification of how the Smithsonian will proceed with voluntary separation incentive payments be made part of the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SMITHSONIAN INSTITUTION,
Washington, DC, July 31, 2003.

Hon. BILL FRIST,
Majority Leader, U.S. Senate,
Washington, DC.
Hon. TOM DASCHLE,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR LEADER FRIST AND LEADER DASCHLE: In discussions to facilitate the Senate's consideration of H.R. 2195, the ''Smithsonian Facilities Authorization Act,'' the Smithsonian Institution would like to clarify its intentions with regard to Section 5, providing authority for voluntary separation inventive payments, or buyouts. This letter gives a detailed explanation of how we will proceed with the buyout.

If this legislation is enacted, the Secretary of the Smithsonian Institution will have the authority to offer separation incentives to employees who voluntarily retire or resign. Incentives will be offered on the basis of organizational unit, occupational series or level, geographic location, specific window periods, skills, knowledge, other job related factors, or a combination of such factors. An incentive payment will be the lesser of the amount of severance pay the employee would be entitled to if the employee were entitled to a severance payment, or an amount determined by the Secretary not to exceed $25,000. We will offer buyouts for no more than three years from the date of enactment of H.R. 2195.

Any employee is eligible for the buyout if he or she is serving under an appointment without time limitation and has been employed for at lest three years continuously in the civil service at the Smithsonian. Employees not eligible for the buyout are reemployed annuitants, employees eligible for disability retirement, employees about to be separated for misconduct or unacceptable performance, employees who have previously received a voluntary separation incentive payment, employees who are on transfer from an agency of the Executive Branch, and employees who had received a recruitment or relocation bonus, a retention allowance, or a student loan repayment.

The Secretary will devise a plan outlining the intended use of voluntary separation incentive payments. The plan will include the specific positions and functions to be reallocated, a description of the categories of employees to be offered incentives, the time period during which incentives may be paid, the number and amounts of the incentive payments, and a description of how the Smithsonian will operate after positions and functions are reallocated. The Secretary will consult with the Office of Management and Budget regarding the Institution's plan prior to implementation and will provide an organization chart for the Smithsonian Institution reflecting its operations after incentive payments have been completed.

In addition, buyouts will only be made in the case of an employee who voluntarily separates and will be paid in a lump sum after the employee's separation. Buyouts will not be the basis for payments or included in the computation on any other type of governments benefit, will not be taken into account in determining the amount of severance pay, and will be taken from appropriations or funds available for the basic pay of the employee.

We will amend our administrative procedures and make clear the buyout offer that any employee who accepts the voluntary separation incentive payment and then accepts employment for compensation with the Federal Government within five years will be required to repay to the Smithsonian Institution, prior to the individual's first day of employment, the entire amount of the voluntary separation incentive payment. This repayment requirement may be waived in certain circumstances, as detailed in the Homeland Security Act (Public Law 107–296).

The purpose of the buyout is not to reduce employment at the Smithsonian but to reconfigure the workforce to meet current and future needs.

I hope this information is useful. Please do not hesitate to contact me if you have any further questions. The passage of the ''Smithsonian Facilities Authorization Act'' prior to the August recess is extremely important to the Institution.

All the best,

LAWRENCE M. SMALL,
Secretary.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the bill be read a third time and passed, that the motion to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2195) was read the third time and passed.

GARNER E. SHRIVER POST OFFICE BUILDING

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Government Affairs Committee be discharged from further consideration of H.R. 1761 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1761) to designate the facility of the United States Postal Service located at 9350 East Corporate Hill Drive in Wichita, Kansas, as the ''Garner E. Shriver Post Office Building''.

There being no objection, the Senate proceeded to consider the bill.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements regarding the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1761) was read the third time and passed.

NATIONAL HISTORICALLY BLACK COLLEGES AND UNIVERSITIES WEEK

NATIONAL VETERANS AWARENESS WEEK

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 242, S. Res. 30, and Calendar No. 243, S. Res. 204, en bloc.

The PRESIDING OFFICER. The clerk will report the resolutions by title.

The legislative clerk read as follows:

A resolution (S. Res. 30) expressing the sense of the Senate that the President should designate the week beginning September 14, 2003, as ''National Historically Black Colleges and Universities Week''.

A resolution (S. Res. 204) designating the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

There being no objection, the Senate proceeded to consider the resolutions.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the resolutions be agreed to en bloc, the preambles be agreed to en bloc; further, that the motions to reconsider be laid upon the table en bloc, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 30) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 30

Whereas there are 105 historically black colleges and universities in the United States;

Whereas historically black colleges and universities provide the quality education so essential to full participation in a complex, highly technological society;

Whereas historically black colleges and universities have a rich heritage and have played a prominent role in American history;

Whereas historically black colleges and universities have allowed many underprivileged students to attain their full potential through higher education; and

Whereas the achievements and goals of historically black colleges and universities are deserving of national recognition: Now, therefore, be it

Resolved,

SECTION 1. DESIGNATION OF NATIONAL HISTORICALLY BLACK COLLEGES AND UNIVERSITIES WEEK.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the President should designate the week beginning September 14, 2003, as ''National Historically Black Colleges and Universities Week''.

(b) PROCLAMATION.—The Senate requests the President to issue a proclamation—

(1) designating the week beginning September 14, 2003, as ''National Historically Black Colleges and Universities Week''; and

(2) calling on the people of the United States and interested groups to observe the week with appropriate ceremonies, activities, and programs to demonstrate support for historically black colleges and universities in the United States.

The resolution (S. Res. 204) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 204

Whereas tens of millions of Americans have served in the Armed Forces of the United States during the past century;

Whereas hundreds of thousands of Americans have given their lives while serving in the Armed Forces during the past century;

Whereas the contributions and sacrifices of the men and women who served in the Armed Forces have been vital in maintaining the freedoms and way of life enjoyed by Americans;

Whereas the advent of the all-volunteer Armed Forces has resulted in a sharp decline in the number of individuals and families who have had any personal connection with the Armed Forces;

Whereas this reduction in familiarity with the Armed Forces has resulted in a marked decrease in the awareness by young people of the nature and importance of the accomplishments of those who have served in the Armed Forces, despite the current educational efforts of the Department of Veterans Affairs and the veterans service organizations;

Whereas the system of civilian control of the Armed Forces makes it essential that the future leaders of the Nation understand the history of military action and the contributions and sacrifices of those who conduct such actions; and

Whereas, on November 6, 2002, President George W. Bush issued a proclamation urging all Americans to observe November 10 through November 16, 2002, as National Veterans Awareness Week: Now, therefore, be it

Resolved,

SECTION 1. NATIONAL VETERANS AWARENESS WEEK.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the President should designate the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week''.

(b) PROCLAMATION.—The Senate requests the President to issue a proclamation—

(1) designating the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week'' for the purpose of emphasizing educational efforts directed at elementary and secondary school students concerning the contributions and sacrifices of veterans; and

(2) calling on the people of the United States to observe National Veterans Awareness Week with appropriate educational activities.

AMERICAN JEWISH HISTORY MONTH

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 25.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 25) recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month,'' and for other purposes.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the amendment to the resolution be agreed to, the concurrent resolution, as amended, be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1539) was agreed to, as follows:

Strike all after the resolving clause and insert the following:

That Congress—

(1) recognizes the 350th anniversary of the American Jewish community;

(2) supports the designation of an ''American Jewish History Month''; and

(3) urges all Americans to share in this commemoration so as to have a greater appreciation of the role the American Jewish community has had in helping to defend and further the liberties and freedom of all Americans.

The concurrent resolution (S. Con. Res. 25), as amended, was agreed to.

The preamble was agreed to.

The concurrent resolution, as amended, with its preamble, reads as follows:

S. CON. RES. 25

Whereas in 1654, Jewish refugees from Brazil arrived on North American shores and formally established North America's first Jewish community in New Amsterdam, now New York City;

Whereas America welcomed Jews among the millions of immigrants that streamed through our Nation's history;

Whereas the waves of Jewish immigrants arriving in America helped shape our Nation;

Whereas the American Jewish community has been intimately involved in our Nation's civic, social, economic, and cultural life;

Whereas the American Jewish community has sought to actualize the broad principles of liberty and justice that are enshrined in the Constitution of the United States;

Whereas the American Jewish community is an equal participant in the religious life of our Nation;

Whereas American Jews have fought valiantly for the United States in every one of our Nation's military struggles, from the American Revolution to Operation Enduring Freedom;

Whereas not less than 16 American Jews have received the Medal of Honor;

Whereas 2004 marks the 350th anniversary of the American Jewish community;

Whereas the Library of Congress, the National Archives and Records Administration, the American Jewish Historical Society, and the Jacob Rader Marcus Center of the American Jewish Archives have formed ''The Commission for Commemorating 350 Years of American Jewish History'' (referred to in this resolution as the ''Commission'') to mark this historic milestone;

Whereas the Commission will use the combined resources of its participants to promote the celebration of the Jewish experience in the United States throughout 2004; and

Whereas the Commission is designating September 2004 as ''American Jewish History Month'': Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

[(1) recognizes—

[(A) the 350th anniversary of the American Jewish community; and

[(B) ''The Commission for Commemorating 350 Years of American Jewish History'' and its efforts to plan, coordinate, and execute commemorative events celebrating 350 years of American Jewish history;

[(2) supports the designation of an ''American Jewish History Month''; and

[(3) urges all Americans to share in this commemoration so as to have a greater appreciation of the role the American Jewish community has had in helping to defend and further the liberties and freedom of all Americans.]

NATIONAL MISSING ADULT AWARENESS MONTH

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 213, introduced earlier today by Senator LINCOLN.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 213) designating August 2003, as National Missing Adult Awareness Month.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table with no intervening action or debate, and any statements relating to this measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 213) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 213

Whereas our Nation must acknowledge that missing adults are a growing group of victims, who range in age from young adults to senior citizens and reach across all lifestyles;

Whereas every missing adult has the right to be searched for and to be remembered, regardless of the adult's age;

Whereas our world does not suddenly become a safe haven when an individual becomes an adult;

Whereas there are tens of thousands of endangered or involuntarily missing adults over the age of 17 in our Nation, and daily, more victims are reported missing;

Whereas the majority of missing adults are unrecognized and unrepresented;

Whereas our Nation must become aware that there are endangered and involuntarily missing adults, and each one of these individuals is worthy of recognition and deserving of a diligent search and thorough investigation;

Whereas every missing adult is someone's beloved grandparent, parent, child, sibling, or dearest friend;

Whereas families, law enforcement agencies, communities, and States should unite

to offer much needed support and to provide a strong voice for the endangered and involuntarily missing adults of our Nation;

Whereas we must support and encourage the citizens of our Nation to continue with efforts to awaken our Nation's awareness to the plight of our missing adults;

Whereas we must improve and promote reporting procedures involving missing adults and unidentified deceased persons; and

Whereas our Nation's awareness, acknowledgment, and support of missing adults, and encouragement of efforts to continue our search for these adults, must continue from this day forward: Now, therefore, be it

Resolved, That the Senate—

(1) designates August 2003, as ''National Missing Adult Awareness Month''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

CONGRATULATING LANCE ARMSTRONG FOR WINNING THE 2003 TOUR DE FRANCE

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 214, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 214) congratulating Lance Armstrong for winning the 2003 Tour de France.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 214) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 214

Whereas Lance Armstrong won the 2003 Tour de France, the 100th anniversary of the race, by completing the 2,125-mile, 23-day course in 83 hours, 41 minutes, and 12 seconds, finishing 1 minute and 1 second ahead of his nearest competitor;

Whereas Lance Armstrong's win on July 27, 2003, marks his fifth Tour de France victory;

Whereas, with this victory, Lance Armstrong joined Miguel Indurain as the only riders in history to win cycling's most prestigious race in 5 consecutive years;

Whereas Lance Armstrong displayed incredible perseverance, determination, and leadership in prevailing over the mountainous terrain of the Alps and Pyrenees and in overcoming crashes, illness, hard-charging rivals, and driving rain on the way to winning the premier cycling event in the world;

Whereas, in 1997, Lance Armstrong defeated choriocarcinoma, an aggressive form of testicular cancer that had spread throughout his abdomen, lungs, and brain, and after treatment has remained cancer-free for the past 6 years;

Whereas Lance Armstrong is the first cancer survivor to win the Tour de France;

Whereas Lance Armstrong's courage and resolution to overcome cancer has made him a role model to cancer patients and their loved ones, and his efforts through the Lance Armstrong Foundation have helped to advance cancer research, diagnosis, and treatment, and after-treatment services;

Whereas Lance Armstrong continues to be the face of cycling as a sport, a healthy fitness activity, and a pollution-free transportation alternative; and

Whereas Lance Armstrong's accomplishments as an athlete, teammate, cancer survivor, and advocate have made him an inspiration to millions of people around the world: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates Lance Armstrong and the United States Postal Service team on their historic victory in the 2003 Tour de France; and

(2) commends the unwavering commitment to cancer awareness and survivorship demonstrated by Lance Armstrong.

SEC. 2. The Secretary of the Senate shall transmit an enrolled copy of this resolution to Lance Armstrong.

AUTHORIZING REPRESENTATION BY SENATE LEGAL COUNSEL IN THE CASE OF WAGNER V. UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 215, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 215) to authorize representation by the Senate Legal Counsel in the case of Wagner v. United States Senate Committee on the Judiciary, et al.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 215) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 215

Whereas, the United States Senate Committee on the Judiciary and Senator Orrin G. Hatch have been named as defendants in the case of Wagner v. United States Senate Committee on the Judiciary, et al., No. 1:03CV01225 (RMU), pending in the United States District Court for the District of Columbia;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend in civil actions Committees of the Senate, and Members of the Senate relating to the Members' official responsibilities: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the United States Senate Committee on the Judiciary and Senator Orrin G. Hatch in the case of Wagner v. United States Senate Committee on the Judiciary, et al.

EXECUTIVE SESSION

TREATIES

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following treaties on today's Executive Calendar: Nos. 7, 8, 9, 10, 11.

I further ask consent that the treaties be considered as having passed through their various parliamentary stages up to and including the presentation of the resolutions of ratification; that any committee conditions, declaration, or reservations be agreed to as applicable; that any statements in regard to these treaties be printed in the RECORD as if read; and that the Senate take one vote on the resolution of ratifications to be considered as separate votes; further, that when the resolutions of ratification are voted upon, the motion to reconsider be laid upon the table, the President be notified of the Senate's action, and that following the disposition of the treaties, the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The treaties will be considered to have passed through their various parliamentary stages up to and including the presentation of the resolutions of ratification.

The resolutions of ratification are as follows:

Resolutions of Ratification as approved by the Senate:

Agreement with Russian Federation concerning Polar Bear Population (Treaty Doc. 107–10)

Resolved, (two-thirds of the Senators present concurring therein),

Section 1. Senate Advice and Consent subject to a condition.

The Senate advises and consents to the ratification of the Agreement Between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, done at Washington October 16, 2000 (T. Doc. 107–10, in this resolution referred to as the ''Agreement''), subject to the condition in section 2.

Sec. 2. Condition.

The advice and consent of the Senate to the ratification of the Agreement is subject to the condition that the Secretary of State shall promptly notify the Committee on Environment and Public Works and the Committee on Foreign Relations of the Senate in any instance that, pursuant to Article 3 of the Agreement, the Contracting Parties modify the area to which the Agreement applies. Any such notice shall include the text of the modification and information regarding the reasons for the modification.

Agreement Amending Treaty with Canada Concerning Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty Doc. 108–1)

Resolved, (two-thirds of the Senators present concurring therein),

That the Senate advises and consents to the ratification of the Agreement Amending

the Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, done at Washington May 26, 1981, and effected by an exchange of diplomatic notes at Washington July 17, 2002, and August 13, 2002 (T. Doc. 108–1).

Amendments to the 1987 Treaty on Fisheries with Pacific Island States (Treaty Doc. 108–2)

Section 1. Senate Advice and Consent subject to a Declaration.

The Senate advises and consents to the ratification of the Amendments to the 1987 Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, with Annexes and Agreed Statements, done at Port Moresby, April 2, 1987, done at Koror, Palau, March 30, 1999, and at Kiritimati, Kiribati March 24, 2002 (T. Doc. 108–2, in this resolution referred to as the ''Amendments''), subject to the declaration in section 2.

Sec 2. Declaration.

The advice and consent of the Senate to the ratification of the Amendments is subject to the following declaration:

The advice and consent provided under section 1 is without prejudice to any position the Senate may take with respect to providing advice and consent to ratification of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, signed by the United States on September 9, 2000.

Convention for International Carriage by Air (Treaty Doc. 106–45)

Section 1. Senate Advice and Consent subject to reservation.

The Senate advises and consents to the ratification of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (T. Doc. 106–45, in this resolution referred to as the ''Convention''), subject to the reservation in section 2.

Sec. 2. Reservation.

The advice and consent of the Senate to the ratification of the Convention is subject to the following reservation, which shall be included in the instrument of ratification:

Pursuant to Article 57 of the Convention, the United States of America declares that the Convention shall not apply to international carriage by air performed and operated directly by the United States of America for non-commercial purposes in respect to the functions and duties of the United States of America as a sovereign State.

Protocol to Amend the Convention for Unification of Certain Rules Relating to International Carriage by Air (Treaty Doc. 107–14)

That the Senate advise and consent to the ratification of the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, done at The Hague on September 28, 1955 (T. Doc. 107–14).

Mr. SUNUNU. Mr. President, I ask for a division vote on the resolutions of ratification.

The PRESIDING OFFICER. A division is requested. Senators in favor of the resolutions of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolutions of ratification are agreed to.

MONTREAL CONVENTION AND HAGUE PROTOCOL

Mr. BIDEN. Mr. President, I am pleased to support the Convention for the Unification of Certain Rules for International Carriage by Air, known as the Montreal Convention, which was signed by the United States at a negotiating conference in that city in 1999. The convention provides the basic liability framework for international aviation and the air carriage of cargo and baggage. When it enters into force, the convention, for those nations party to it, will replace the current liability system, known as the Warsaw system, which had its origins in a 1929 treaty known as the Warsaw Convention. Since 1929, the Warsaw Convention has been amended numerous times by various protocols. But membership in the convention and the various protocols has not been universal, creating a patchwork quilt of treaty relations between and among nations. The Montreal Convention is designed to provide a clear and uniform system, and it is hoped that there will be widespread adherence to it.

The Warsaw Convention system is antiquated in several respects, particularly with regard to the absurdly low limitations it contains on liability in cases of passenger injury or death. These limits may have made sense in 1929, when the airline industry was in its infancy. But those limits are anachronistic and indefensible. The airline industry matured long ago, and has long been capable of purchasing adequate liability insurance.

To their credit, the major airline carriers agreed, by contract, to waive the limitations for liability for passenger injury or death in 1996 in the ''IATA Inter-Carrier Agreement on Passenger Liability.'' Most of the airlines flying to and from the United States have taken this action, although several smaller airlines have not. The Montreal Convention will codify this inter-carrier agreement. Article 21 provides for payment, in cases of personal injury or death, of up to 100,000 Special Drawing Rights, currently about $140,000, for proven damages. Above that amount, there will be no limit on the amount an injured person or his or her heirs may obtain; the burden, under Article 21(2), will be on the air carrier to prove that it was not negligent or that the damage was solely due to the negligence or other wrongful act or omission of a third party.

The Montreal Convention also creates a ''fifth jurisdiction'' in addition to the four jurisdictions provided under the Warsaw system. This additional jurisdiction, set forth in article 33(2), will ensure that, in nearly every case, Americans will be able to bring an action in a U.S. court.

The Montreal Convention contains several other provisions that modernize the liability regime for cargo. These provisions were drawn from those in Montreal Protocol No. 4 (to the Warsaw Convention), which the Senate approved in 1998.

The Montreal Convention is self-executing. No implementing legislation is required to fulfill U.S. obligations under it, and, like the Warsaw Convention, will provide the basis for a private right of action in U.S. courts for cases arising under it. Since the United States joined the Warsaw Convention in 1934, that convention has been the basis for hundreds of lawsuits in U.S. courts. Accordingly, a large body of judicial precedents has developed during these seven decades. The negotiators intended that, to the extent applicable, to preserve these precedents.

A question arises whether the judicial doctrine of forum non convenient applies to cases under the Montreal Convention. The circuit courts of appeals in the United States are divided on this question with regard to the Warsaw Convention. Compare *Hosaka* v. *United Airlines, Inc.*, 305 F.3d 989 (9th Cir. 2020), *cert. denied*, 123 S. Ct. 1284 (2003) with *In re Air Crash Disaster Near New Orleans, Louisiana on July 9, 1982*, 821 F.2d 1147 (5th Cir. 1987) (en banc), vacated and remanded on other grounds sub nom. *Pan American World Airways, Inc.* v. *Lopez*, 490 U.S. 1032 (1989). At the diplomatic conference, the United States delegation offered an amendment to the draft text during a meeting of the ''Friends of the Chairman's Group'' to make clear that the doctrine may be applied if consistent with the country's procedural laws. See 1 International Civil Aviation Organization, International Conference on Air Law, Montreal 10–28 May 1999, at 159 (2001) (Advance Copy of Minutes). This provision was not incorporated in the final text of the Montreal Convention. The Committee on Foreign Relations did not address this issue in its deliberations.

The Senate is also considering the Hague Protocol of 1955, a protocol to the Warsaw Convention. It was first submitted to the Senate in 1959, but then returned to the President in 1967. The circumstances that led to the return of the Protocol related to the unreasonably low liability limits that I described earlier. The Protocol was resubmitted by President Bush in 2002.

The Protocol is still relevant for this reason: even with entry into force of the Montreal Convention, the Warsaw system will remain in force among many nations, probably for several years. The Hague Protocol contains many provisions modernizing the Warsaw's systems rules on cargo shipment, and therefore remains important for shippers and consumers.

In 1998, the Senate approved Montreal Protocol No. 4, a protocol to the Warsaw Convention; the United States became a party to the Protocol in March 1999. At the time, it was presumed that, in doing so, the United States also became bound by the provisions of the Hague Protocol. Article XVII of Montreal Protocol No. 4 states that ''[r]atification of this Protocol by any State which is not a Party to the Warsaw Convention or by any State

which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the Warsaw Convention as amended at the Hague, 1955, and by Protocol No. 4 of Montreal, 1975.'' Several courts in the United States appear to have assumed as much. *E.g., Cortes* v. *American Airlines, Inc.,* 177 F.3d 1272 (11th Cir. 1999), *cert. denied,* 528 U.S. 1136 (2000; *Motorola, Inc.* v. *Federal Express Corp.,* 308 F.3d 995 (9th Cir. 2002), *cert. denied sub nom., Kuehne & Nagel, Inc.* v. *Motorola, Inc.,* 123 S. Ct. 2213 (2003). In submitting the Montreal Convention to the Senate, the Executive Branch stated that ''[i]n accordance with the provisions of Montreal Protocol No. 4, the United States also became bound by the provisions of The Hague Protocol when it ratified Montreal Protocol No. 4.'' *See* S. Treaty Doc. 106–45, at ix (2000).

A decision in 2000 by the United States Court of Appeals for the Second Circuit has raised a question about whether the United States has treaty relations under the Hague Protocol with certain states. *See Chubb & Son, Inc.* v. *Asiana Airlines,* 214 F.2d 301 (2d Cir. 2000), cert. denied, 533 U.S. 928 (2001). The executive branch elaborated on this issue in its submission of the Hague Protocol in 2002. S. Treaty Doc. 107–14, at viii–ix (2002). Approval of the Hague Protocol at this time will end any uncertainty that may exist about the question of the status of the United States as a party to the Hague Protocol

Mr. President, the Montreal Convention is an important achievement, the culmination of many decades of effort by the United States and many U.S. citizens to remove the unreasonably low liability limits of the Warsaw Convention. I commend the Clinton Administration negotiators for their fine work in 1999, as well as the many officials of the State and Transportation Departments, before and after 1999, who have worked to develop this treaty and present it to the Senate. The Montreal Convention is supported by all the main interests in the private sector—the airlines, passenger groups, cargo firms, and attorneys representing passengers. It deserves the support of the Senate.

I want to thank Chairman LUGAR and his staff for bringing this treaty forward at this time, and for ensuring Senate action prior to the August recess. I urge all my colleagues to support the Montreal Convention and the Hague Protocol.